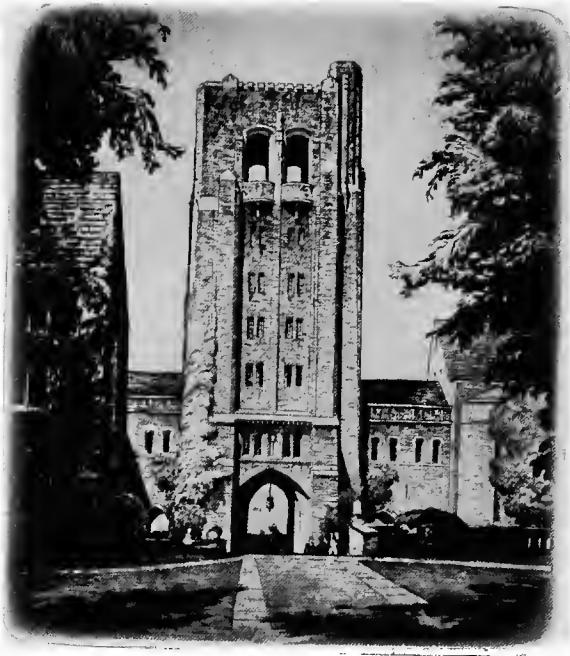


CORNELL LAW LIBRARY



**Cornell Law School Library**

CORNELL UNIVERSITY

JAN 24 1912

LAW LIBRARY.

Cornell University Library  
KF 879.A2 1910

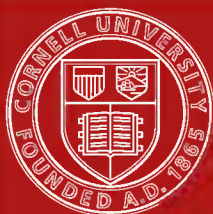
American uniform commercial acts, includi



3 1924 018 847 487

law





Cornell University  
Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.



*National conference of Commissions  
on uniform state laws*

# American Uniform Commercial Acts

INCLUDING

Uniform Sales Act  
Uniform Stock Transfer Act  
Uniform Negotiable Instruments Act  
Uniform Warehouse Receipts Act  
Uniform Bills of Lading Act

Prepared under the Direction of and  
Recommended by

The Commissioners on Uniform  
State Laws

IN  
NATIONAL CONFERENCE

JANUARY 1, 1910



# AMERICAN UNIFORM COMMERCIAL ACTS

INCLUDING

Uniform Sales Act ✓  
Uniform Stock Transfer Act ✓  
Uniform Negotiable Instruments Act ✓  
Uniform Warehouse Receipts Act ✓  
Uniform Bills of Lading Act ✓

Prepared Under the Direction of and  
Recommended by the

Commissioners on Uniform State Laws

IN NATIONAL CONFERENCE

---

1910  
THE W. H. ANDERSON CO.  
CINCINNATI

*B455-*

---

---

FROM THE PRESS OF  
THE GIBSON & PERIN CO.  
CINCINNATI, OHIO

---

---

JAN 24 1912

LAW LIBRARY. TABLE OF CONTENTS

|                                                                | PAGES   |
|----------------------------------------------------------------|---------|
| I. Officers of Commissioners on Uniform Laws                   | 4       |
| II. Committee on Commercial Law . . . .                        | 5       |
| III. List of Commissioners . . . . .                           | 6-10    |
| IV. Introduction by President Smith . . . .                    | 11-13   |
| V. Report of Committee on Commercial Law<br>(1908) . . . . .   | 14-34   |
| VI. Report of Committee on Commercial Law<br>(1909) . . . . .  | 35-69   |
| VII. Preface to Uniform Sales Act . . . . .                    | 70      |
| VIII. Uniform Sales Act (Annotated) . . .                      | 71-120  |
| IX. Preface to Uniform Stock Transfer Act .                    | 121     |
| X. Uniform Stock Transfer Act (Annotated)                      | 122-132 |
| XI. Preface to Uniform Negotiable Instruments<br>Act . . . . . | 133-135 |
| XII. Uniform Negotiable Instruments Act . .                    | 136-184 |
| XIII. Preface to Uniform Warehouse Receipts<br>Act . . . . .   | 185     |
| XIV. Uniform Warehouse Receipts Act<br>(Annotated) . . . . .   | 186-212 |
| XV. Preface to Uniform Bills of Lading Act .                   | 213-228 |
| XVI. Uniform Bills of Lading Act (Annotated)                   | 229-255 |

**OFFICERS OF THE COMMISSIONERS ON  
UNIFORM STATE LAWS  
IN NATIONAL CONFERENCE—1909-1910.**

---

**WALTER GEORGE SMITH, President,**  
1006 Land Title Building, Philadelphia, Pa.

**PETER W. MELDRIM, Vice-President,**  
15 W. Bay Street, Savannah, Ga.

**CHARLES THADDEUS TERRY, Secretary,**  
100 Broadway, New York, N. Y.

**TALCOTT H. RUSSELL, Treasurer,**  
42 Church Street, New Haven, Conn.

**FRANCIS A. HOOVER, Assistant Secretary,**  
1004-5-6 Mercantile Library Building, Cincinnati, Ohio

---

**EXECUTIVE COMMITTEE.**

**WILLIAM H. STAAKE, Chairman,**  
City Building, Philadelphia, Pa.

**CHARLES F. LIBBY,**  
57 Exchange Street, Portland, Maine.

**JOHN FLETCHER,**  
Adams Building, Main and Markham Sts., Little Rock, Ark.

**CHARLES W. SMITH,**  
Box 57, Stockton, Kansas.

**HIRAM GLASS,**  
Texarkana, Texas.

**And Officers and Ex-Pres. AMASA M. EATON,**  
(Providence, Rhode Island.)  
Ex Officio.

COMMITTEE ON COMMERCIAL LAW OF  
THE COMMISSIONERS ON UNIFORM STATE LAWS.  
1909-1910

---

FRANCIS B. JAMES, Chairman,  
1004-5-6 Mercantile Library Building, Cincinnati, Ohio.

CHARLES F. LIBBY,  
57 Exchange St., Portland, Me.

TALCOTT H. RUSSELL,  
42 Church Street, New Haven, Conn.

W. O. HART,  
134 Carondelet Street, New Orleans, La.

CHARLES THADDEUS TERRY,  
100 Broadway, New York City.

GEORGE WHITELOCK,  
1407 Continental Trust Building, Baltimore, Md.

JAMES BARR AMES,  
Harvard Law School, Cambridge, Mass.

## COMMISSIONERS ON UNIFORM STATE LAWS (1909-10).

---

|                                 |                                                                                                                                                                                                                                           |
|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Arkansas</b>                 | John Fletcher, Little Rock.<br>John M. Moore, Moore and Turner Bldg., Little Rock.<br>Ashley Cockrill, Southern Trust Bldg., Little Rock.                                                                                                 |
| <b>Alabama</b>                  | Frederick G. Bromberg, 72 St. Francis St., Mo<br>bile.<br>Henry Tonsmeire, Mobile.<br>S. D. Weakly, Birmingham.                                                                                                                           |
| <b>Arizona</b>                  | Edward Kent, Court House, Phoenix.<br>J. M. Ross, Prescott.<br>E. E. Ellinwood, Bisbee.                                                                                                                                                   |
| <b>California</b>               | John F. Davis, 1430 Masonic Ave., San Francisco.<br>Charles Monroe, California Club, Los Angeles.<br>Lynn Helm, Los Angeles Trust Bldg., Los Angeles.<br>Gurney E. Newlin, 431 S. Hill St., Los Angeles.<br>Walter R. Leeds, Los Angeles. |
| <b>Colorado</b>                 | Willis V. Elliott, Kittredge Bldg., Denver.<br>Gerald Hughes, Hughes Bldg., Denver.<br>Thomas H. Devine, Rooms 30-35 Opera House<br>Block, Pueblo.                                                                                        |
| <b>Connecticut</b>              | Talcott H. Russell, Room 502-3, 42 Church St.,<br>New Haven.<br>Walter E. Coe, Stamford.<br>Erliss P. Arvine, 42 Church St., New Haven.                                                                                                   |
| <b>District of<br/>Columbia</b> | Walter C. Clephane, Fendall Bldg., Washington.<br>F. L. Siddons, Bond Bldg., Washington.<br>Aldis B. Browne, Glover Bldg., 1419 F. St. N. W.,<br>Washington.                                                                              |
| <b>Florida</b>                  | Robert W. Williams, 123 South Monroe Street.<br>Tallahassee.<br>John C. Avery, Rooms 209-13 Thiesen Building.<br>Pensacola.<br>Louis C. Massey, Empire Building, Orlando.                                                                 |
| <b>Georgia</b>                  | Peter W. Meldrim, 15 W. Bay St., Savannah.<br>A. C. Pate, Odd Fellows Bldg., Hawkinsville.<br>Reuben R. Arnold, Atlanta.                                                                                                                  |
| <b>Idaho</b>                    | James E. Babb, Lewiston.<br>Fremont Wood, Boise.<br>W. W. Woods, Wallace.                                                                                                                                                                 |

- Illinois** John C. Richberg, 1304 Rector Bldg., Chicago.  
John H. Wigmore, Northwestern Law School, Chicago.  
Oliver A. Harker, University of Illinois, Champaign.  
Ernst Freund, University of Chicago, Chicago.  
Nathan William MacChesney, 1322 Stock Exchange Building, Chicago.
- Indiana** Andrew A. Adams, Columbia City.  
E. B. Sellers, Monticello.  
S. O. Pickens, Indianapolis.  
Merrill Moores, Indianapolis.  
James W. Noel, Indianapolis,
- Iowa** Emlin McClain, Supreme Court, Iowa City.  
Thomas A. Cheshire, Des Moines.  
J. B. Sullivan, Des Moines.  
H. O. Weaver, State Savings Bank Bldg., Wapello.
- Kansas** A. A. Godard, Topeka.  
S. M. Hawkes, Topeka.  
S. H. Allen, Topeka.  
J. L. Jackson, Topeka..  
Charles W. Smith, Box 57, Stockton.
- Kentucky** T. L. Edelen, Frankfort.  
John T. Shelby, Lexington.  
James R. Duffin, Louisville.
- Louisiana** Thomas J. Kernan, 414 Third St., Baton Rouge.  
W. O. Hart, 134 Carondelet St., New Orleans.  
J. R. Thornton, 122 Murray St., Alexandria.
- Maine** Charles F. Libby, 57 Exchange St., Portland.  
Frank M. Higgins, Limerick.  
Hannibal E. Hamlin, Main St., Ellsworth.
- Maryland** George Whitelock, 1407 Continental Trust Bldg., Baltimore.  
Lewin W. Wickes, Chestertown.  
Jacob Rohrbach, Frederick.
- Massachusetts** Hollis R. Bailey, Cambridge.  
Sam'l Ross, New Bedford.  
James Barr Ames, Cambridge.
- Michigan** George W. Bates, 32-33 Buhl Bldg., Detroit.  
L. C. Fyfe, Benton Harbor.  
C. P. Black, Lansing.

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Minnesota</b>     | <p>W. S. Pattee, College of Law, University of Minnesota, Minneapolis.</p> <p>Rome G. Brown, 1006 Met. Life Building, Minneapolis.</p> <p>Frederick V. Brown, Court House, Minneapolis.</p> <p>Daniel Fish, 412 N. Y. Life Bldg., Minneapolis.</p> <p>Howard S. Abbott, 402 Federal Building, Minneapolis.</p> <p>Frank D. Larrabee, 410 Security Bank Building, Minneapolis.</p> <p>W. W. Billson, Duluth.</p> <p>T. R. Kane, St. Paul.</p> <p>Albert R. Moore, 616-19 Germania Life Insurance Building, St. Paul.</p> <p>John D. O'Brien, Commercial Bldg., St. Paul.</p> |
| <b>Mississippi</b>   | <p>Robert H. Thompson, 429½ East Capitol St., Jackson.</p> <p>A. T. Stovall, Okolona.</p> <p>W. V. Sullivan, Sullivan Bldg., Oxford.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Missouri</b>      | <p>Seneca N. Taylor, Pierce Bldg., St. Louis.</p> <p>John D. Lawson, Columbia.</p> <p>Edward A. Krauthoff, Kansas City.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Montana</b>       | <p>J. B. Clayberg, Union Bank &amp; Trust Co., Helena.</p> <p>T. C. Marshall, Missoula,</p> <p>Hiram Knowles, Missoula.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Nebraska</b>      | <p>John L. Webster, 826 N. Y. Life Bldg., Omaha.</p> <p>Ralph W. Breckenridge, 711 N. Y. Life Building, Omaha.</p> <p>Wm. G. Hasling, Wilbur.</p>                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>New Mexico</b>    | <p>James N. Hervey, Roswell.</p> <p>James G. Fitch, Socorro.</p> <p>A. A. Freeman, Carlsbad, (Victoria, B. C.)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>New Hampshire</b> | <p>H. E. Burnham, Manchester.</p> <p>Ira A. Chase, 16 Pleasant St., Bristol.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>New Jersey</b>    | <p>John R. Emery, Newark.</p> <p>John R. Hardin, 765 Broad Street, Newark.</p> <p>Frank Bergen, 763 Broad Street, Newark.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>New York</b>      | <p>Charles Thaddeus Terry, 100 Broadway, New York City.</p> <p>Francis M. Burdick, 633 W. 115 St., New York City.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

- North Carolina** J. Crawford Biggs, Durham.  
Linsley Patterson, Winston-Salem.  
Charles A. Moore Asheville.
- North Dakota** H. R. Turner, Rooms 1-6 Edwards Bldg., Fargo.  
John E. Greene, Suite 1, Scofield Bldg., Minot.
- Ohio** Seth S. Wheeler, Holland Block, Lima.  
Francis B. James, 1004-5-6 Mercantile Library  
Building, Cincinnati.  
Harry B. Arnold, 8 E. Long St., Columbus.
- Oklahoma** J. C. Strang, Guthrie.  
J. W. Shartell, Oklahoma City.  
C. R. Brooks, 135 W. Main St., Guthrie.  
John H. Mosier, Walsh Bldg., Norman.  
C. B. Ames, Oklahoma City.
- Oregon** W. H. Emmons, 365 Washington St., Portland.  
W. H. Fowler, Portland.
- Pennsylvania** William H. Staake, 648 City Hall, Philadelphia.  
Walter George Smith, 1006 Land Title Building,  
Philadelphia.  
Robert Snodgrass, Harrisburg.
- Philippine  
Islands** E. Finley Johnson, Associate Judge Supreme  
Court, Manila.  
Charles S. Lobingier, Judge Court of First In-  
stance, District of Manila, Baguio.  
Charles H. Smith, Judge Court of First Instance,  
Manila (or Jackson, Mich.)
- Rhode Island** Amasa M. Eaton, 86 Weybosset St., Providence.  
Clarence N. Wooley, Studley Bldg., Providence.  
William R. Tillinghast, Hospital Trust Company  
Building, Providence.
- South Carolina** T. Moultrie Mordecai, 43 Broad St., Charleston.  
J. C. Sheppard, Edgefield.  
J. P. Thomas, Jr., Columbia.
- South Dakota** L. W. Crofoot, Aberdeen.  
U. S. G. Cherry, Sioux Falls.  
J. H. Voorhees, Sioux Falls.  
A. W. Wilmarth, Huron.
- Tennessee** Lem Banks, Memphis.  
W. H. Washington, Nashville.  
H. H. Ingersoll, Knoxville.

|                      |                                                                                                                                                                    |
|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Texas</b>         | W. M. Crook, Beaumont.<br>H. M. Garwood, Houston.<br>Claude Pollard, Kingsville.<br>Hiram Glass, Texarkana.                                                        |
| <b>Utah</b>          | Jerrold R. Letcher, U. S. Court, Salt Lake.<br>Benner X. Smith, Salt Lake City.<br>L. L. Baker, Tooele.                                                            |
| <b>Vermont</b>       | O. M. Barber, Ritchie Block, 463 Main Street,<br>Bennington.<br>A. A. Hall, cor. Main and Kingman Sts., St. Albans.                                                |
| <b>Virginia</b>      | Eugene C. Massie, Richmond.<br>James R. Caton, Alexandria.<br>J. E. Thrift, Madison.                                                                               |
| <b>Washington</b>    | Charles E. Shepard, 613-14 N. Y. Bldg., Seattle.<br>W. B. Tanner, Olympia.<br>Alfred Battle, 901 Alaska Bldg., Seattle.                                            |
| <b>West Virginia</b> | John W. Davis, Clarksburg.<br>Hunter H. Moss Jr., Parkersburg.<br>Charles W. Dillon, Fayetteville.<br>William W. Brannon, Weston.<br>Edgar B. Stewart, Morgantown. |
| <b>Wisconsin</b>     | Edward W. Frost, 1201-6 Wells Bldg., Milwaukee.<br>Dr. Chas. McCarthy, Wisconsin State Library,<br>Madison.<br>E. Ray Stevens, Madison.                            |
| <b>Wyoming</b>       | Charles N. Potter, Cheyenne.<br>W. E. Mullen, Cheyenne.<br>Edward T. Clark, Cheyenne.                                                                              |

## INTRODUCTION.

In the year 1890 the New York Legislature adopted an Act authorizing the appointment of "Commissioners for the Promotion of Uniformity of Legislation in the United States" whose duty it was to examine the subjects of marriage and divorce, insolvency, the form of notarial certificates and other subjects to ascertain the best means to effect an assimilation and uniformity in the laws of the states, and especially whether it would be wise and practicable for the States of New York to invite the other States of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several states. At its session held during the same year, the American Bar Association resolved to recommend the passage by each state and by the Congress of the United States for the District of Columbia and the territories of an act similar to the first section of that of the State of New York with the addition of the following subjects: Descent and Distribution of Property, Acknowledgment of Deeds, Execution and Probate of Wills.

During the years that have elapsed since this memorable action, nineteen National conferences of commissioners from different states and territories have been held, there being now forty-eight states and territories including the District of Columbia and the Philippine Islands represented in the conference. At the nineteenth annual meeting held in Detroit, Michigan, August 19th-23rd, 1909, commissioners from thirty states were present.

The five following Acts represent the results of the work of the Conference on the subject of Commercial Law. Each of the Acts has been drafted by experts, carefully considered

in committee and at various sessions of the whole Conference after being printed in tentative form, and sent out for public and private criticism. Each of these Acts has therefore had the most careful scrutiny, and, as a result, it is believed that they represent the actual law upon all of the subjects covered, and where the law of the various states differs, the weight of opinion is expressed in these Acts.

The Uniform Negotiable Instruments Act (approved by the Conference in 1896) has been adopted in Alabama, Arizona, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming,—in all thirty-eight states and territories.

The Uniform Warehouse Receipts Act (approved by the Conference in 1906) has been adopted in California, Connecticut, Iowa, Illinois, Kansas, Louisiana, Michigan, Massachusetts, Nebraska, New Jersey, New York, New Mexico, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia and Wisconsin.

The Uniform Sales Act (approved by the Conference in 1906) has been adopted in Arizona, Connecticut, Massachusetts, New Jersey, Ohio and Rhode Island.

The Uniform Stock Transfer Act was approved at the last conference (1909) and it is anticipated that it will meet with acceptance as it is presented in the different legislatures of the states during the coming sessions.

The Uniform Bills of Lading Act was adopted at the last conference (1909) after the most careful consideration and criticism by the large interests affected. It is believed that it represents the ripe thought both of the legal profession and of shippers,

receivers, bankers and carriers and will be received with satisfaction in each of the states when their legislatures meet.

The Conference still has under consideration the tentative draft of a Uniform Partnership Act which it is hoped may be completed at the session of 1910.

There is also the draft of a Uniform Incorporation Act in the hands of the proper committee.

All of these Acts have been prepared in response to the pressing need of the business world to remove as far as possible the uncertainty and vexation arising from the widely differing laws of the states and territories on matters of daily importance. The Conference of Commissioners has been careful to avoid taking up any subject that is not so far settled and of such universal application as to make it a proper subject for embodiment in a statute. They have followed largely the precedent and have been guided by the experience of Great Britain and her colonies in their selection of subjects. The adoption of the American Uniform Commercial Acts and their interpretation by the courts of last resort in accordance with the spirit of prevailing mercantile usage, will remove one of the greatest drawbacks to the satisfactory working of our dual political system in its application to business matters and cannot fail to strengthen that system itself.

WALTER GEORGE SMITH,

President.

Philadelphia, Pa., January 1, 1910.

**ANNUAL REPORT (1908)**  
**COMMITTEE ON COMMERCIAL LAW.**

---

*To the Commissioners on Uniform State Laws in Eighteenth National Conference:*

The Committee on Commercial Law of the Commissioners on Uniform State Laws in National Conference begs leave to submit the following report:

**I. UNIFORM NEGOTIABLE INSTRUMENTS ACT.**

[See Annual Report 1909.]

**II. UNIFORM SALES ACT.**

[See Annual Report 1909.]

**III. UNIFORM WAREHOUSE RECEIPTS ACT.**

[See Annual Report 1909.]

**IV. UNIFORM PARTNERSHIP ACT.**

[See annual Report 1909.]

**V. UNIFORM TRANSFER OF STOCK ACT.**

[See Annual Report 1909.]

**VI. UNIFORM BILLS OF LADING ACT.**

The subject of bills of lading has received much consideration during the past year at the hands of shippers, carriers, bankers and credit men, and also at the hands of the Interstate Commerce Commission. It has been estimated that bills of lading are issued annually representing a value of 25 billions of commodities, but no accurate information is available as to how much is represented by order bills of lading and how much by

straight bills of lading. It has been estimated, however, that the banks annually advance five billion dollars on order bills of lading. Heretofore, it has been the almost universal practice of railroad companies to use but one form of bill of lading, with a provision that if the word "order" be written before the name of the consignee that such bill of lading becomes an order bill of lading. This practice will in the future be very much modified, if not entirely abolished, in view of the recent order of the Interstate Commerce Commission of June 27, 1908, recommending the adoption of two standard forms of bills of lading. One form recommended is an order bill of lading printed on yellow paper 8½ inches long by 11 inches wide, and in which the word "Order" will be in print. A straight bill of lading is to be of the same size, printed on white paper. Both the order bill of lading and the straight bill of lading are to be subject to ten conditions printed on the back thereof, in addition to the conditions printed on the face. This action of the Interstate Commerce Commission will undoubtedly largely augment the use of order bills of lading and also greatly increase the amount of money advanced by bankers on order bills of lading. The two standard forms of bills of lading formulated by Interstate Commerce Commission are the result of the action of a joint committee of carriers and of certain shipping associations in official territory. It is believed by the Interstate Commerce Commission that their recommendation will be voluntarily concurred in both by shippers and carriers, and that the new standard forms of bills of lading should be fully tested in practice. The order of the Interstate Commerce Commission is added as an appendix for the information of the Commissioners in perfecting the work before the Conference on State Legislation. Mr. A. P. Burguin, Counsel for the Pennsylvania Railroad Co. at Pittsburg, and Mr. F. A. Farnham, Counsel for the New York, New Haven and Hartford Railroad Co. at Boston, Mass., have been counsel for the Joint

Committee above referred to on behalf of the railroads. These gentlemen have also appeared before the Committee on Commercial Law of the Commissioners on Uniform State Laws for the purpose of discussing the first tentative draft of the Bills of Lading Act formulated by the Commissioners on Uniform State Laws. They have addressed a communication to the Committee on Commercial Law of this Conference, which your Committee has embodied in this report as follows:

“The third draft of the Bill of Lading Act has been the subject of study and correspondence by and between members of the Uniform Bill of Lading Committee and their Counsel, and was discussed at their meeting in New York on July 30th. The committee, as you know, represents all the railroads in the official classification territory, namely, east of the Mississippi and north of the Potomac and Ohio Rivers. Much interest is felt in the Act, and in the hope that it may be perfected as far as possible the committee and counsel believe that final action by the National Conference at this year’s meeting would be undesirable, for two principal reasons.

“You know that the form of bill of lading has been the subject of discussion for some four years, and final agreement has been reached by the shippers and carriers. An order was passed June 27th by the Interstate Commerce Commission approving the form, recommending its adoption in official classification territory, and expressing the hope that it be adopted throughout the country. It is now expected by November 1st of this year it will be put in use by all the railroads in official classification territory.

“The committee think that the final determination of the form of your proposed Act should be postponed until the bill of lading, with all its details, has been perfected, has been actually put in operation, and an opportunity has been given to induce the Western and Southern roads to adopt it. Certain changes

should be made in your Act to conform to the new bill of lading. The second section deals particularly with the form and would need revision in some particulars which we do not seek here to enumerate. One fact, however, is that there will hereafter be two distinct forms of bill of lading, one for order shipments and one for straight shipments. When these forms are in use certain changes in your Act will be obviously desirable. It is sufficient to say on this point that while the form and various incidents of the recent bill of lading are undergoing material change, it is inadvisable to determine the form of an act which you wish adopted by all the States, and which will be out of date in less than a year.

"The second principal objection is that a number of points have been discovered of more or less importance in the present draft which seem to require revision. We have all been so busy with the form of the new bill that we have been unable to give your Act the thorough attention it deserves, and have not as yet determined all of the points which we think need further consideration.

"It has not been found practicable to send a delegate to the Convention this year, nor has it been thought desirable to make such partial suggestions as were now feasible. The Bill of Lading Committee and counsel would prefer to present their suggestions as a whole, and with definite recommendations. Possibly this might be done at some meeting of your own committee.

"In view of the above considerations it was voted unanimously that the undersigned be delegated in the name of the committee to write you requesting postponement of final action until another National Conference, and to accompany the request with an outline of the reasons. This letter is sent you in pursuance of that vote and we hope that it will receive the favorable consideration of yourself and the Committee on Commercial Law and of the Conference as a whole."

The Merchants' Association of New York has addressed a communication to your committee upon the subject of the Third Tentative Draft of the Bills of Lading Act, in which criticism is made of Section 24 and of the definition of value contained in Section 50. Section 24 refers to attachments. The underlying principle of the sections of the Sales Act on Documents of Title, the Warehouse Receipts Act, Certificates of Stock Act and Bills of Lading Act is that these documents become the sole representatives of the property described in them, and that they should be given the quality of negotiability. Each of these Acts contained an identical provision on the same subject-matter, and same is in aid of negotiability. This section is peculiarly important in the case of negotiable bills of lading because negotiable bills of lading are dealt in a long distance from the physical location of the commodity and where the purchaser or bank advancing money thereon has no opportunity of making inquiry as to the existence of attachments or executions. A similar provision of the Sales Act was more frequently, lengthily, thoroughly and exhaustively discussed than any other section of any uniform act ever discussed before the Commissioners. Action upon the Sales Act was finally postponed for a whole year for the sole purpose of obtaining the views of the country generally upon that section. After a delay of a whole year the section as it now stands was finally adopted by the unanimous vote of all States represented in the Conference, with but one State declining to vote. Your Committee believes section 24 of the Third Tentative Bill of Lading Act should stand as it is.

The definition of value contained in section 50 of the Bill of Lading Act is identical with similar sections in the Negotiable Instruments Act, Warehouse Receipts Act, Sales Act and Certificates of Stock Act. Your Committee believes that this definition represents the sound commercial view upon the sub-

ject. In view of the fact, however, that the definition of the word "value" has never been fully discussed by the Conference, your Committee believes it should be fully discussed, but your Committee is in hopes the Conference will adhere to the definition as given.

While the third tentative draft of the Bills of Lading Act recognizes the negotiability of order bills of lading, yet, it does not protect a bona fide purchaser for value from a thief or finder. This subject has never been fully discussed either by the Committee on Commercial Law or the Commissions on Uniform State Laws. In view of this fact, the attitude of the Committee on Commercial Law of the American Bar Association on the subject of warehouse receipts and the action of the American Bar Association in adopting the report of the Committee on Commercial Law of that body, the views of the Committee on Commercial Law of the American Bar Association in reference to Bills of Lading, and the very recent case of *Hardie vs. R. R. Co.* (1907), 118 Louisiana 254, the law on the continent of Europe and the extensive and growing use of order bills of lading, it is but proper that this subject should be fully discussed by the Commissioners on Uniform State Laws and ample time taken to ascertain the views of the country at large upon this vital and important commercial subject. In view of the foregoing considerations the Committee on Commercial Law recommends that final action on the Bills of Lading Act be postponed for another year.

## VII. UNIFORM LAW GOVERNING COMMON CARRIERS.

Hon. Martin A. Knapp, Chairman of the Interstate Commerce Commission, in an argument before the Committee on Interstate and Foreign Commerce of the House of Representatives, on March 25, 1908, said:

“We have the Federal Law and we have the laws of forty-six States. I do not know of any subject of commercial importance upon which there is such a great variety of judicial decisions, or greater conflict of authority than upon the question of carriers’ liability.”

With the tremendous volume of commodities transported over 220,000 miles of railroads and countless miles of waterways, through many States, and the failure of Congress to discharge its full constitutional duty to regulate Interstate Commerce, each State has undertaken to regulate the law of carriers, and these laws have been recognized as applicable where they do not unnecessarily and directly burden Interstate Commerce. The railroads have attempted to overcome in part the diversity of State laws by means of a cumbersome bill of lading. This condition has also forced the Interstate Commerce Commission to encumber the two forms of bills of lading recommended by that body with numerous conditions on the face and ten on the back. The relation between carrier and shipper ought to be well defined by law, and be the same in each state. If this were accomplished, a clean bill of lading would be possible, especially a clean order bill of lading. A negotiable order bill of lading ought to be as clean as a check, draft or promissory note. A clean order bill of lading is very much desired by shipper, carrier and banker. Mr. Blewett Lee, a member of the American Bar Association and General Attorney for the Illinois Central Railroad Co., has thus expressed himself in a letter to this Committee:

“I have no doubt an Act to make uniform the law governing carriers is greatly to be desired, and that such a statute well drawn would make it possible to rid bills of lading of their present cumbersome verbiage. Such a statute should deal with the matters which are now covered by the clauses of the bill of lading, and make their presence upon the document unnecessary. As the matter stands the situation is complicated by the fact that

the clauses of the bill of lading are often void in some States and not in others, so that the effort to bring about uniformity of rule by contract is not very successful. With a proper statute a clean bill of lading would be both possible and desirable.

"I do not think I am in position to speak for the carriers upon the question of an Act to make uniform the law governing carriers. Frankly, I think that the present confusion of the law operates rather to their advantage than otherwise, and in the present state of popular opinion, a statute revising the rights of carriers might do them scant justice. At the same time, from the standpoint of the lawyer and merchant, uniformity of the law of carriers is so much to be desired that I hope the Committee on Commercial Law of the Commissioners on Uniform State Laws will not fail to make an earnest effort to secure it. I do not think they ought to leave the subject of Commercial Law until they have dealt with at least those topics which are included in the commercial codes of foreign countries."

Your Committee therefor recommends that a resolution be adopted authorizing the Committee on Commercial Law to proceed with the formulation of a First Tentative Draft of a Uniform Freight Carrier Act.

#### VIII. OTHER WORK OF THE COMMITTEE.

[Omitted for Brevity.]

Very respectfully,

FRANCIS B. JAMES, *Chairman*;  
TALCOTT H. RUSSELL,  
WALTER GEORGE SMITH,  
W. O. HART,  
CHAS. THADDEUS TERRY,

Committee.

*Seattle, Washington, Aug. 21, 1908.*

APPENDIX.  
IN THE MATTER OF BILLS OF LADING.  
[Volume 14, I. C. C. R., pp. 346-355.]

June 27, 1909.

The subject of bills of lading considered and a uniform bill of lading recommended.

Knapp, *Chairman*:

This is a proceeding of investigation and inquiry instituted by the Commission on November 21, 1904. Shortly before that date numerous petitions were received from the Illinois Manufacturers' Association and other commercial organizations in Official Classification territory, complaining of the proposed adoption by railroad companies operating in that territory of certain changes in the so-called uniform bill of lading then generally used in the transportation of freight over their respective lines.

To inform itself concerning the controversy brought to its attention by these petitions, the Commission ordered an investigation, and the first hearing was had on the fifth and sixth days of December, 1904. It appeared at that time that the matters in question were the proper subject for negotiation and settlement between the various conflicting interests, and upon the suggestion of the Commission a joint committee of shippers and carriers was appointed to formulate a suitable bill of lading and report the same to the Commission. During the year 1906 and the first months of 1907 this committee held numerous conferences and gave to the subject most careful attention. On June 14, 1907, they made a report to the Commission and submitted a bill of lading which appears to have been agreed upon and consented to by the original petitioners and by substantially all carriers in Official Classification territory. The Commission was thereupon asked to approve this bill and direct its adoption.

In order that the matter might be more fully considered and other shippers and carriers have opportunity to be heard before taking action, the Commission on July 8, 1907, made a supplemental order, reciting the proceedings up to that time, providing for a further hearing on the 15th of October following, and requiring carriers to whom it was sent to show cause on that day why the proposed bill of lading should not be approved and prescribed by the Commission to be used on and after January 1, 1908. A copy of this order, with copies of the proposed bill of lading and of the petition of the Illinois Manufacturers' Association (the other petitions being similar thereto), was thereupon mailed to all railroad companies subject to the act to regulate commerce, so far as they were known, and they were directed, if they desired to object to the adoption of this bill of lading, to file their objections in writing with the Commission on or before the 16th day of September, 1907.

On the 15th of October, the date named for the second hearing, there was a large attendance and the matter was discussed at length by representatives of various interests. While the fundamental features of the bill were not the subject of much dispute, there was considerable conflict of views and demands respecting certain provisions of more or less importance. Some concessions were virtually made during the progress of the hearing and other points of disagreement were reserved for further consideration.

Since this public hearing, and from time to time down to almost the present, there have been informal conferences with representatives of various interests, and an extensive correspondence has been conducted, all with the view of reducing differences to a minimum and securing the widest possible assent to a bill of lading which the Commission might approve. It seems quite unnecessary to mention the different questions which have been raised or to review the arguments by which divergent

opinions have been supported. While the efforts of the committee have resulted in close approach to agreement, at least so far as concerns miscellaneous freight and general merchandise, there are a few points upon which complete accord has not been secured. Of these, the principal one relates to the construction of the so-called Carmack amendment, included in the enactment of 1906, and that question will doubtless remain unsettled until finally determined by the courts. There are also some special interests which are not altogether satisfied with the bill in its present form. Nevertheless, the degree of unanimity attained in regard to this matter is proof of the earnest endeavor of the committee to reach a common understanding, and amply justifies their appointment. The Commission has been measurably relieved from a task of great difficulty, because the bill as now submitted represents in most, if not all, of its principal features a virtual agreement between shippers and carriers.

In its general scope as well as its detailed provisions this bill does not differ materially from the one assented to and proposed to the Commission in June, 1907, as above stated. Such changes as have been made, and they are quite numerous, have all been in the direction of greater simplicity and are all believed to be in the interest of the shipping public. *Aside from these modifications of the bill as submitted a year ago, another change has been made which is regarded of great practical value. This change consists in the provision of two forms or kinds of bills of lading in place of the single form now and heretofore in use; one to be used for "order consignments" and the other for "straight consignments," as those terms are understood in commercial dealings. These two forms will be distinguished by different colors and each will contain provisions suited to its separate purpose. They will differ only on the face side, the conditions printed on the back being the same in both cases. These differences will appear upon inspection and need not here be enumerated. The*

*main point in this connection is that the "order" bill will possess a certain degree of negotiability, while the "straight" bill will be nonnegotiable and is to be so stamped upon its face. Moreover, and this is a matter of consequence, the order bill of lading will be required to be surrendered upon or before the delivery of the property to the consignee. It is believed that this plan will in large part meet the requirements of the banking concerns of the country which advance vast sums of money upon bills of lading and are entitled to a reasonable measure of protection.*

This proposed bill of lading—for the two forms may be considered as one in what we have further to say—is submitted for adoption by the carriers and use by the shipping public with considerable confidence. It is not claimed to be perfect, and experience may develop the need of further modifications, but it represents the most intelligent and exhaustive efforts of those who undertook its preparation to agree upon a bill of lading which should be reasonably satisfactory to the railroads and the public. It is, of course, more or less a compromise between opposing interests, because on one hand it imposes obligations of an important character which carriers have not heretofore assumed, and on the other retains exemptions to which some shippers may object and perhaps not without substantial reason. As we are advised, it is in some respects less favorable to the shipper than the local laws or regulations of one or more States, but is more favorable to the shipper than the local laws or regulations of most of the States. On the whole, it is believed to be the best adjustment which is now practicable of a controversy of long standing which affects the business interests of the entire country.

Whatever criticisms or objections may be advanced, this bill of lading is concededly a great improvement upon the bills now in general use. Its adoption, we are persuaded, will be a long step toward uniformity, simplicity and certainty. It will

likewise be a long step in the direction of fair dealing between shipper and carrier, and may be confidently expected to remove much of the confusion which now exists and to measurably avoid in the future the irregularities and injustice which have heretofore occurred. The results of practical operation may disclose defects not at present perceived, and further adjudications by the courts may require a change in some of its provisions, but we believe it should be given an honest trial, and are strongly of the opinion that it will be found fairly suited to the practical needs of the business community. If it proves otherwise under the test of experience the Commission will exercise its corrective authority as to any matter within its jurisdiction.

As above suggested, this bill of lading is designed for use in connection with the movement of miscellaneous freight and general merchandise and as a substitute for the bills now in use in the carriage of this description of property. It is not intended to take the place of special bills of lading which are issued on particular commodities of such a nature or so handled as to require exceptional provisions, such as live stock, for example, and perhaps perishable property. In short, this bill is proposed as a uniform or standard bill, so to speak, to be used in connection with freight articles generally, except such as now are or ought to be carried under special conditions. We are unable from want of knowledge to indicate just what commodities fall within this exception, much less to determine the special provisions suited to any accepted commodity, and therefore do not attempt to go further at this time than to approve of what may be called a standard bill of lading.

Nor do we undertake to prescribe this bill of lading and order its adoption, because we are convinced that such an order would exceed our authority. Moreover, the situation makes no demand for a positive direction. The circumstances under which the work of the joint committee has been conducted and the sub-

stantial agreement on most points by the different interests concerned, to say nothing of direct assurances from representatives of the carriers, warrant us in expecting that the assenting roads will adopt the bill upon our recommendation. We therefore assume that the railroads in Official Classification territory, whose proposed action was the subject of the original investigation, will adopt and use this bill, to the extent above indicated, from and after the date named for that purpose.

We shall also expect that railroad carriers subject to the act outside of Official Classification territory will adopt and use this bill of lading to the same extent and from and after the same date. There may be peculiar conditions in Western and Southern territory which require some modifications of or additions to this standard bill, but the desirability of uniform usage is so great and the reasons for it so obvious as to justify the expectation that carriers in Western and Southern territory will adopt the bill in question to the fullest extent practicable without abridging any just privileges which their shippers now enjoy.

Accordingly the Commission hereby gives approval to the bill of lading annexed to this report and made a part thereof, the "order" bill and "straight" bill differing only on the front page, the conditions printed on the back being the same in both cases, and recommends its adoption and use, to the extent above named, by all carriers subject to the act to regulate commerce from and after the 1st day of September, 1908. The intervening period is allowed for printing new bills and using those now on hand. As indicated by the "Notes," there are minor details which will be arranged by the uniform bill of lading committee and should also be adopted.

It should be distinctly understood that this approval does not imply acceptance by the Commission of any construction of the Carmack amendment at variance with its apparent purpose and intent, nor will the general recommendation now made pre-

clude the Commission from passing independent judgement upon any provision in this bill of lading which may be drawn in question in future proceedings.

An appropriate order will be entered.

..... Railroad Company.

**ORDER BILL OF LADING—ORIGINAL.**

Received, subject to classifications and tariffs in effect on the date of issue of this original bill of lading, at.....  
..... 190.., from..... the property described below, in apparent good order, except as noted (contents and conditions of contents of packages unknown), marked, consigned and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this original order bill of lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

Notes.—The foregoing will appear on the front or first page of the bill of lading.

In connection with the name of the party to whom the shipment is consigned the words “Order of” shall prominently appear in print, thus:

“Consigned to order of.....”

The bill of lading is to be signed by the shipper and agent of the carrier issuing same, and space shall be provided for this purpose.

The detail arrangement respecting other matters that customarily appear on the face of the bill of lading, such as name of destination, car numbers, routing, description of articles, weights, etc., will be prescribed by the uniform bill of lading committee.

The size of the bill of lading shall be 8½ inches wide by 11 inches long.

Order bills of lading shall be printed on yellow paper for convenient distinction from bills of lading covering other than "order" consignments.

.....Railroad Company.

#### **BILL OF LADING—ORIGINAL—NOT NEGOTIABLE.**

Received subject to classifications and tariffs in effect on the date of issue of this original bill of lading at.....  
.....190..., from.....the property described below, in apparent good order, except as noted (contents and conditions of contents of packages unknown) marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

Notes.—The foregoing will appear on the front or first page of the bill of lading.

The bill of lading is to be signed by the shipper and agent of the carrier issuing same, and space shall be provided for this purpose.

The detail arrangement respecting other matters that customarily appear on the face of the bill of lading, such as name of destination, car numbers, routing, description of articles, weights, etc., will be prescribed by the uniform bill of lading committee.

The size of the bill of lading shall be 8½ inches wide by 11 inches long.

Bills of lading covering what may be termed "straight consignments," being those other than "order consignments," shall be printed on white paper.

Bills of lading other than those covering "order consignments" shall be stamped "not negotiable."

The following conditions will appear on the back of the bill of lading:

## **CONDITIONS**

**Section 1.** The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession

(and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Section 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

Section 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Section 4. All property shall be subject to necessary coo-  
perage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Section 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

Section 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Section 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written

disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Section 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Section 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and to be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

Section 10. Any alteration, addition, or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

ANNUAL REPORT (1909)  
COMMITTEE ON COMMERCIAL LAW.

---

*To the Commissioners on Uniform State Laws in Nineteenth National Conference:*

The Committee on Commercial Law of the Commissioners on Uniform State Laws in National Conference begs leave to submit the following report:

I. UNIFORM NEGOTIABLE INSTRUMENTS ACT.

(a) *Progress:* The Uniform Negotiable Instruments Act has now been enacted in the thirty-eighth (38) States and Territories of Alabama, Arizona, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

(b) *Last years' Work:* It has been passed in the two (2) States of New Hampshire and Oklahoma since the last meeting of the Conference.

(c) *Work to be Done:* It has not yet been enacted in the twelve (12) States of (1) Arkansas, (2) California, (3) Delaware, (4) Georgia, (5) Indiana, (6) Maine, (7) Minnesota, (8) Mississippi, (9) South Carolina, (10) South Dakota, (11) Texas and (12) Vermont; in the one (1) Territory of (1) Alaska; and in the two (2) Insular Possessions of (1) Porto Rico, and the (2) Philippine Islands and the (1) Isthmian Possession of the (1) Panama Canal Zone; a total of sixteen States, Territories and Insular and Isthmian Possessions.

(d) *Municipal and Corporate Bonds*: Mr. Arthur W. Machen, Jr., of the Baltimore bar, in his recent (1908) "Treatise on the Modern Law of Corporations" has raised a question as to the effect of the Negotiable Instruments Act on certain securities. He says (Sec. 1740-a):

"The Negotiable Instruments Law, which has been adopted in a large number of states, may have a disturbing effect upon the negotiability of some corporation bonds and debentures. The Act provides that 'an instrument to be negotiable must conform' to certain specified requirements. Does this provision apply to instruments other than promissory notes, bills of exchange and similar securities, so that no corporation bonds which fail conform to the statutory requirements can possess the attribute of negotiability, notwithstanding the fact that such instruments may have been treated as negotiable by mercantile custom? Such a hard and fast rule would certainly be unfortunate and unsuited to the genius of a commercial people.

"The English Act, upon which the American Law is in some respects modeled, was more cautious in this particular. It defined the requisites of negotiable bills of exchange, promissory notes and cheques; but did not attempt in sweeping terms to provide that no instrument which might not conform to these requisites should be negotiable. Accordingly, as we have seen, a debenture issued by an English company, which by reason of uncertainty imported into it by some of the endorsed conditions does not comply with the statutory requisites of a promissory note, may nevertheless become negotiable by an established mercantile usage.

"It is submitted that the courts of those states in which the Negotiable Instruments Law has been adopted should struggle to reach the same conclusion. The Act, if construed otherwise, would abrogate the noblest characteristic of the common law, its adaptability to new commercial conditions,

and substitute a rule of Chinese stagnation. Being in derogation of the common law, the Act should be construed strictly. So, Senator Daniel is of the opinion that statutory tests of negotiability should not be construed to apply to coupon bonds. Nevertheless, the sweeping language of the Negotiable Instruments Law is hard to avoid.

"Inconvenience to be encountered from applying the Negotiable Instruments Law to coupon bonds may be discerned on every hand. To take a concrete example, the year after the passage of that law by the State of Maryland, the corporation operating the street railways of the City of Baltimore issued a large number of income bonds which are to be redeemable at the option of the Company after a certain date, but which by their terms are never to mature except upon default by the Company in paying principal or interest of certain underlying mortgage bonds. The interest on the income bonds is represented by coupons, which, however, are payable only in the event that sufficient income is earned by the Company. It is quite clear that neither bonds nor coupons possess that degree of certainty in regard to payment which by the Negotiable Instruments Law is made a condition of negotiability. They are, however, constantly dealt in on the stock exchange, and are treated by brokers and others as negotiable instruments. Does the statute require that notwithstanding this clear and uniform usage, the instruments must be held to be non-negotiable? At common law, the mercantile custom might be recognized; and as the statute does not in express terms provide that the custom of merchants must be disregarded, it is submitted that the court should adhere to the safe and beneficial principles of the common law.

"Another illustration is afforded by a recent New York case. The Adams Express Company, which is an unincorporated joint-stock company, had issued a series of coupon

bonds which by their terms were payable to bearer but which provided that the holder of the bonds and coupons should look exclusively to the joint property for payment. and that the several members or partners should incur no personal liability. It was objected that the bonds were a mere promise to pay out of a particular fund, namely, the joint assets of the association, and therefore by the express terms of the Negotiable Instruments Law were non-negotiable. The majority of the New York Court overruled this contention, but on the ground that the company was a quasi legal entity, and that therefore the obligation of the company to pay out of its funds was a personal obligation and not, within the meaning of the Negotiable Instruments Law, a mere promise to pay out of a particular fund."

If it were not for the very high character of this book, which is bound to become a standard treatise upon the subject of Corporations, particular attention would not be called to this passage.

Mr. Machen seems to have overlooked the fact that the Negotiable Instruments Act is not a complete codification of the law of Negotiable Instruments and the instruments to which he refers would perhaps be negotiable under the provisions of section 196 of the act (Brannan, p. 40), which provides: "In any case not provided for in this act the rules of the Law Merchant shall govern."

This provision of the Act may possibly overcome the difficulty suggested by Mr. Machen.

The committee has thought it proper to call this matter to the attention of the Commissioners without making any particular recommendation in reference thereto.

(e) *Annotated Acts*: The Commissioners have long felt the need of annotated editions of the Negotiable Instruments

Act which would include the judicial decisions on the same. This has been supplied by an annotated edition of the Negotiable Instruments Act by Prof. J. D. Brannan, of the Harvard Law School, and a third edition of the Negotiable Instruments Act by Mr. John J. Crawford, of the New York bar, who was its draftsman. The edition by Prof. Brannan\* is of peculiar value because, among many other merits, it presents the Act in its original form and preserves permanently the controversy between Dean James Barr Ames and Judge Lyman D. Brewster, and the able review thereof by Mr. Charles L. McKeehan, of the Philadelphia bar.

(f) *Judicial Decisions:* The courts of last resort of the various states which have enacted the Negotiable Instruments Law are following the decisions of the courts of last resort of the other states which have enacted the same, and thus aiding in maintaining uniformity.

## II. UNIFORM SALES ACT.

(a) *Progress:* The Uniform Sales Act has been passed in the six (6) States and Territories of Arizona, Connecticut, Massachusetts, New Jersey, Ohio, and Rhode Island.

(b) *Last Year's Work:* It has not been passed in any state since the last meeting of the Conference. The attention of the Commissioners is strongly called to the great commercial value of this act, and to the necessity of having it passed in all the states of the Union.

(c) *Text Book:* "The Law Concerning Sales of Goods at Common Law and under the Uniform Sales Act," by Prof. Samuel Williston, of the Harvard Law School, has just been issued to the public. In addition to its merit as the latest

---

\*The W. H. Anderson Co., of Cincinnati, Ohio, are getting out a second edition of this work.

and best book on the Law of Sales, it contains a statement of the common law, followed in the text itself by the provisions of the Sales Act, and points out the changes made thereby in the common law and elucidates the true and proper construction and application of the sections of the Sales Act. This commentary can be used with great advantage in arguments before legislative bodies in securing the passage of the Act, and will be of peculiar benefit to the bench and bar in those States which enact the same.

### III. UNIFORM WAREHOUSE RECEIPTS ACT.

(a) *Progress:* The Uniform Warehouse Receipts Act has already been enacted in the eighteen (18) States and Territories of California, Connecticut, Iowa, Illinois, Kansas, Louisiana, Michigan, Massachusetts, Nebraska, New Jersey, New York, New Mexico, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia and Wisconsin.

(b) *Last Year's Work:* It was passed in the eight (8) States and Territories of California, Kansas, Michigan, Nebraska, New Mexico, Pennsylvania, Tennessee,\* and Wisconsin since the last meeting of the Conference.

### IV. UNIFORM PARTNERSHIP ACT.

In 1902 Dean James Barr Ames volunteered his services to the Committee on Commercial Law to draft a uniform Partnership Act. At the meeting of the Commissioners on Uniform State Laws at Narragansett Pier, August 18th, 1905, the Commissioners adopted a resolution as follows: "That in drawing the Partnership Code, Professor Ames be requested to draw it on the lines of the mercantile theory of partnership." At the meeting of the Commissioners on Uniform State Laws at St. Paul, Minn., August 22nd, 1906, Dean Ames submitted a first tentative draft of a uniform Partnership Act.

At the meeting of the Commissioners on Uniform State Laws at Portland, Me., August 22nd, 1907, a resolution was adopted requesting Dean Ames to prepare notes on each section of the Uniform Partnership Act.

At the meeting of the Commissioners on uniform State Laws held at the New Washington Hotel, Seattle, Washington, August 24, 1908, Dean Ames made the following statement in reference to the Partnership Act:

"Two years ago I was commissioned to draft an act to make Uniform the Law of Partnership, and I was instructed in drawing it to recognize the commercial conception of a partnership, and to deal with it as an entity or legal person. A year ago I presented a draft which was referred back to the Committee on Commercial Law. I intended to present this year a revised and annotated draft, but I find to my surprise that there are in several states constitutional provisions which seem to me to create a difficulty. It is a serious difficulty in four states, and a considerable one in seven states. In those states there are provisions of the constitution affecting associations, affecting corporations in certain special ways, and the term 'corporation' is defined in those constitutions as follows:

" 'The term corporation as used in this article shall be construed to include all associations, and joint stock companies, having any of the powers or privileges of corporations, not possessed by individuals or partnership.'

"Therefore, I do not see that the special purport of the constitutional provision has any bearing upon a possible draft of a Partnership Act in many of these states, but, in four states, the constitutional provision provides that stockholders shall not be liable beyond a double liability. If, therefore, we should proceed strictly upon the personification of partnership, we would

be met at once with the provision that it possibly could not be made lawful for more than double the individual contribution, which, of course, is quite at war with the whole conception of partnership.

"It seems to me that this language in these state constitutions is so sweeping that it would be very difficult to say that a partnership treated as a legal person out and out, would not be a corporation under these constitutions, for, certainly, the privilege of being treated as a legal person in all respects is not one of the privileges now possessed.

"It seemed to me, therefore, that I ought not to proceed further without taking the opinion of the Conference."

Thereupon the following resolution was adopted:

"That the first tentative draft of the Partnership Act be recommitted to the Committee on Commercial Law."

At the meeting of the Committee on Commercial Law at the Waldorf-Astoria Hotel, New York city, April 19 and 20, 1909, the first tentative draft of the Uniform Partnership Act was fully and exhaustively discussed. Dean Ames was asked to prepare a second tentative draft of this act, which he has accordingly done. This was discussed by the Committee on Commercial Law at the Hotel Pontchartrain, Detroit, Michigan, August 17 and 18, 1909.\* The committee recommends same be fully and exhaustively discussed by the Commissioners on Uniform State Laws at their meeting to be held at the Wayne County Court House, Detroit, Michigan, August 19, 20 and 21, 1909.

## V. UNIFORM TRANSFER OF STOCK ACT.

In 1906 the Commissioners on Uniform State Laws in National Conference employed Prof. Samuel Williston, of the

---

\*Appendix B contains a list of those present.

Harvard Law School to prepare a draft of an act to make Uniform the Law of Transfer of Title to Shares of Stock in Corporations. A first tentative draft was considered by the Committee on Commercial Law of the Commissioners on Uniform State Laws at Portland, Maine, August 21st, 1907, and by the Commissioners at the same place, August 22d, 23d and 24th, 1907. As a result of the discussion a second tentative draft was prepared and discussed by the Committee on Commercial Law at the New Washington Hotel, Seattle, Washington, August 20th, 1908, and by the Commissioners at the same place August 21, 22 and 24, 1908. Thereupon a third tentative draft was prepared and circulated February 1st, 1909, and carefully examined at a meeting of the Committee on Commercial Law at the Waldorf-Astoria, New York city, April 19 and 20, 1909. In the light of all criticisms and suggestions a fourth tentative draft was prepared and circulated July 15, 1909, and fully discussed by the Committee on Commercial Law at the meeting held at the Hotel Pontchartrain, Detroit, Mich., August 17, 1909.† It is hoped that final action will be taken thereon at the present meeting of the Commissioners.

## VI. UNIFORM BILLS OF LADING ACT.

(a) *Progress in Preparing Act:* In 1905 the Commissioners on Uniform State Laws employed Prof. Samuel Williston, of the Harvard Law School, to prepare an Act to make Uniform the Law of Bills of Lading. The first draft was submitted to the Committee on Commercial Law at St. Paul, Minn., August 23rd, 1906, and received some consideration at its hands. The Commissioners deferred its discussion for a year so that it might be submitted to shippers, bankers and carriers. The Committee on Commercial Law held a meeting at the

---

†Appendix B contains a list of those present.

Bellevue-Stratford Hotel, Philadelphia, Pa., May 13th and 14th, 1907, at which all these interests were represented. As a result of the discussion, a second draft was prepared and considered by the Committee on Commercial Law at Portland, Me., Wednesday, August 21st, 1907, and by the Commissioners at the same place August 22nd, 23rd and 24th. A third tentative draft was distributed June 1st, 1908. The Commissioners at their annual conference held at the New Washington Hotel, Seattle, Washington, August 21st, 22d and 24th, 1908, re-committed the draft to the Committee on Commercial Law for the purpose of securing additional expert information in perfecting the Act. The Committee on Commercial Law held a meeting at the Waldorf-Astoria Hotel, New York city, April 19th and 20th, 1909, at which were present representatives of the American Bankers' Association, the American Warehousemen's Association, the National Board of Trade, Merchants Association of New York city, the Chamber of Commerce of Richmond, Va., the National Industrial Traffic League, the National Manufactures' Association, the Erie Railroad, the Pennsylvania Railroad, the New York, New Haven & Hartford Railroad, the Old Dominion Steamship Company, the Bills of Lading Committee of Railroads in Official Territory, the Harvard Law School, the Law Departments of Columbia University and the University of Pennsylvania. In addition written communications were considered from numerous individuals and commercial organizations. A fourth tentative draft was circulated July 17, 1909. This was very carefully considered and discussed by the Committee on Commercial Law at the Hotel Pontchartrain, Detroit, Mich., August 18th, 1909.\*

(b) *Criticism:* The Merchants' Association of New York city, through Mr. Abram Elkus, of Messrs. James, Schell &

---

\*Appendix B contains a list of those present.

Elkus, has addressed a communication to the committee criticising the definition of the word "value" as contained in section 51 of the Fourth Tentative Draft\* of the Bills of Lading Act. The criticism is divided into two parts, the first relating to the first sentence, and the second to the second sentence of the definition. The word "value" appears fourteen times in the Act, being found in sections 6, 7, 8, 9, 14, 15, 17, 23, 24, 32, 34, 35, 38, 39, 40, 42. The definition of the word "value" contained in section 51\* would be read into each of these sections. We will consider the criticisms separately:

(1)

*"Value is any consideration sufficient to support a simple contract."*

This in no wise changes the now generally accepted definition of value as to negotiable credit instruments and securities.

The English Bills of Exchange Act (Chalmers 5th Ed. 1896, p. 80) provides:

"Sec. 27. Valuable consideration for a bill may be constituted by (a) any consideration sufficient to support a simple contract."

The same act (ibid, p. 7) provides:

"Sec. 2. Value means valuable consideration."

These sections as part of the English Act have been adopted in forty-five English Provinces, Colonies and Dependencies.

The Uniform Negotiable Instruments Act (Brannan on Negotiable Instruments Law, p. 9) provides:

"Sec. 25. Value is any consideration sufficient to support a simple contract."

The same act provides (ibid p. 39):

"Sec. 191. Value means valuable consideration."

---

\*Section 53 in the Final Draft.

This act has now been enacted in thirty-eight (38) States and Territories.

The Sales Act (Sec. 76) uses the same definition, and this has been enacted in six States and Territories.

The Warehouse Receipts Act (Sec. 58) uses the same definition. This has been enacted in eighteen (18) States and Territories.

It may therefore be said that this definition prevails in nearly every English speaking Nation, State, Colony, Territory, Insular Possession and Dependency. It does not unsettle any general unwritten law because there are but few judicial decisions upon the subject. Williston on Sales (1909) Sec. 620, pp. 1036-1040, contains an excellent discussion of the definition of "value."\* Mr. Elkus suggests five suppositious cases which would rarely arise in practice, nor would all of them constitute value in the meaning of the definition.† Furthermore, transactions must be *bona fide* to be sustained. In the humble judgement of the Committee much of Mr. Elkus' difficulty arises from his failure to distinguish between "value" and "good faith," both of which are required by the Act. A successful fraud in the five instances suggested is too remote to be sufficient to modify the definition of value which has now been so universally accepted.

---

\*For convenience this is printed as Appendix A.

†The five (5) instances suggested by Mr. Elkus are as follows:

- "1. The promise of his fiancée to marry him.
- "2. The promise of a friend to pay him an annuity or support him for a period of time.
- "3. The promise of another to give a sum to a third person—the wife, child or relative of the trader.
- "4. A promise to abstain from a certain business in a specified locality and for a specified time.
- "5. A promise not to sue.

*"An antecedent or pre-existing obligation whether for money or not constitutes value where a bill is taken either in satisfaction thereof or as security therefor."*

The English Bills of Exchange Act (Chalmers, 5th Ed., 1896, p. 80) provides:

"Sec. 27. (b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time."

As heretofore stated, this definition has been adopted in forty-five English Provinces, Colonies and Dependencies.

The Uniform Negotiable Instruments Act (Brannan, p. 9), provides:

"Sec. 25. An antecedent or pre-existing debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time."

As before stated, this has now been enacted in thirty-eight States and Territories.

The Warehouse Receipts Acts provides:

"Sec. 58. An antecedent or pre-existing obligation whether for money or not, constitutes value where a receipt is taken, either in satisfaction thereof or as security therefor."

This has now been enacted in eighteen states and territories.

The Uniform Sales Act provides:

"Sec. 76. An antecedent or pre-existing claim whether for money or not constitutes value where goods or documents of title are taken either in satisfaction or as security therefor."

It may likewise be said of the second part of this definition as has been of the first half, that this definition is now the law of nearly every English speaking Nation, Territory, Colony, Province, Insular Possession and Dependency.

The criticism may in part be attributed to a radical difference of opinion which has existed between the New York Courts on the one hand and the courts of most states, and the Federal Courts on the other on this subject. Down to the passage of the Negotiable Instruments Law in New York, in 1897, the New York State Courts adhered to a doctrine different from that embodied in the Negotiable Instruments Act. In 1842, in a case arising in a New York Federal Court, by reason of diversity of citizenship, (being the ruling, leading and celebrated case of *Swift vs. Tyson*, 16 Peters 1) the Supreme Court of the United States claimed the right to determine for itself the rule of the law merchant applicable in New York. Mr. Justice Story adopted the rule now embodied in the Negotiable Instruments Act. He put it expressly upon the ground of producing uniformity of commercial law in the commercial world. When the Commissioners on Uniform State Laws framed the Negotiable Instruments Act (through Mr. Crawford, a New York lawyer), they were forced by reason of this lack of uniformity to adopt one rule or the other and refused to adopt the New York State Court rule, and adopted the rule laid down by the Supreme Court of the United States in *Swift vs. Tyson*, *supra*.

In deciding *Swift vs. Tyson*, *supra*, Mr. Justice Story said (pp. 19-20):

"The law respecting negotiable instruments may be truly declared in the language of Cicero, adopted by Lord Mansfield in *Luke vs. Lyde*, 2 Burr., 883, 887, to be in a great measure, not the law of a single country only, but of the commercial world. \* *Non erit alia lex Romae, alia Athenis; alia nunc, alia*

---

\*This popular quotation from Cicero's *De Re Publica* has been compared with the original and the exact language of Cicero is as follows: "*Nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac; sed et omnis gentis, et omni tempore, una lex, et sempiterna et immutabilis continebit.*" (Cicero, *De Re Publica*, III, 28-33; Tauchnitz, Leipzig, 1865, p. 214.)

*posthac; sed et apud omnes gentes, et omni tempore una eademque lex obtinebit.*

"It becomes necessary for us, therefore, upon the present occasion, to express our own opinion of the true result of the commercial law upon the question now before us. And we have no hesitation in saying, that a pre-existing debt does constitute a valuable consideration in the sense of the general rule already stated, as applicable to *negotiable instruments*. Assuming it to be true (which, however, may well admit of some doubt from the generality of the language), that the holder of a *negotiable instrument* is unaffected with the equities between the antecedent parties, of which he has no notice, only where he receives it in the usual course of trade and business for a valuable consideration, before it becomes due; we are prepared to say that receiving it in payment of, or as security for, a pre-existing debt, *is according to the known usual course of trade and business*. And why, upon principle, should not a pre-existing debt be deemed such a valuable consideration? It is for the benefit and convenience of the commercial world, to give as wide an extent as practicable *to the credit and circulation of negotiable paper, that it may pass not only as security* for new purchases and advances, made upon the transfer thereof, but also in payment of, and as security for, pre-existing debts. The creditor is thereby enabled to realize or to secure his debt, and thus may safely give a prolonged credit, or forbear from taking any legal steps to enforce his rights. *The debtor also has the advantage of making his negotiable securities of equivalent value to cash*. But establish the opposite conclusion, that negotiable paper cannot be applied in payment of, or as, security for, pre-existing debts, without letting in all the equities between the original and antecedent parties, and the value and circulation of such securities must be essentially diminished, and the debtor driven to the embarrassment of

making a sale thereof, often at a ruinous discount, to some third person, and then, by circuitry, to apply the proceeds to the payment of his debts. What, indeed, upon such a doctrine, would become of that large class of cases, where new notes are given by the same or by other parties, by way of renewal or security to banks, in lieu of old securities discounted by them, which have arrived at maturity? Probably, more than one-half of all banks transactions in our country, as well as those of other countries, are of this nature. The doctrine would strike a fatal blow at all discounts of negotiable securities for pre-existing debts."

This was reaffirmed in the case of *Brooklyn City and Newtown Railroad Company vs. the National Bank of the Republic of New York* (1880) 102 U. S. 14.

In this case *Mr. Justice Harlan* said (pp. 25-26):

"According to the very general concurrence of judicial authority in this country as well as elsewhere, it may be regarded as *settled in commercial jurisprudence*—there being no statutory regulations to the contrary—that where *negotiable paper* is received in payment of an antecedent debt; or where it is transferred, by indorsement, as collateral security for a debt created, or a purchase made, at the time of transfer; or the transfer is to secure a debt, not due, under an agreement express or to be clearly implied from the circumstances, that the collection of the principal debt is to be postponed or delayed until the collateral matured; or where time is agreed to be given and is actually given upon a debt overdue, in consideration of the transfer of negotiable paper as collateral security therefor; or where the transferred note takes the place of other paper previously pledged as collateral security for a debt, either at the time such debt was contracted or before it became due,—in each of these cases the holder who takes the transferred paper, before its maturity, and without notice,

actual or otherwise, of any defense thereto, is held to have received it in due course of business, and, in the sense of the commercial law, becomes a holder for value, entitled to enforce payment, without regard to any equity or defence which exists between prior parties to such paper.

*"Upon these propositions there seems at this day to be no substantial conflict of authority. But there is such conflict where the note is transferred as collateral security merely, without other circumstances, for a debt previously created. One of the grounds upon which some courts of high authority refuse, in such cases, to apply the rule announced in Swift vs. Tyson is, that transactions of that kind are not in the usual and ordinary course of commercial dealings. But this objection is not sustained by the recognized usages of the commercial world, nor, as we think, by sound reason. The transfer of negotiable paper as security for antecedent debts constitutes a material and an increasing portion of the commerce of the country. Such transactions have become very common in financial circles. They have grown out of the necessities of business, and, in these days of great commercial activity, they contribute largely to the benefit and convenience both of debtors and creditors."*

He further said (p. 28):

*"Our conclusion, therefore, is, that the transfer, before maturity, of negotiable paper, as security for an antecedent debt merely, without other circumstances, if the paper be so indorsed that the holder becomes a party to the instrument, although the transfer is without express agreement by the creditor for indulgence, is not an improper use of such paper, and is as much in the usual course of commercial business as its transfer in payment of such debt. In either case, the bona fide holder is unaffected by equities or defences between prior parties, of which he has no notice. This conclusion is abundantly sustained by authority. A different deter-*

mination by this court would, we apprehend, greatly surprise both the legal profession and the commercial world. See Bigelow's Bills and Notes, 502, et seq.; 1 Daniel, Neg. Inst. (2d ed.), c. 25, sects. 820-233; Story, Promissory Notes, secs. 186, 195 (7th ed.) by Throndyke; Parsons, Notes and Bills (2d ed.), 218, sect. 4, c. 6; and Redfield & Bigelow's Leading Cases upon Bills of Exchange and Promissory Notes, where the authorities are cited by the authors."

Mr. Justice Clifford in a concurring opinion said (pp. 32-33):

*"Commercial law is a system of jurisprudence acknowledged by all maritime nations, and upon no subject is it of more importance that there should be, as far as practicable, uniformity of decision throughout the world.*

*"Bills of exchange and promissory notes are commercial paper in the strictest sense, and as such must ever be regarded as favored instruments, as well on account of their negotiable quality as their universal convenience in mercantile affairs. Everywhere the rule is that they may be transferred by indorsement, or when indorsed in blank or made payable to bearer they are transferable by mere delivery. International regulations encourage their use as a safe and convenient medium for the balances among mercantile men of different nations, and any course of judicial decision calculated to restrain or impede their full and unembarrassed circulation for the purposes of foreign or domestic trade would be contrary to the soundest principles of public policy. Goodman vs. Simonds, 20 How., 343, 364."*

He further said (pp. 57-58):

*"Transactions of a commercial character extend throughout the civilized world, and it is well known that they are chiefly conducted through the medium of bills of exchange and other negotiable instruments. Uniformity of decision is a matter of great*

public convenience and universal necessity, acknowledged by all commercial nations. Should this court adopt a principle of decision which when carried into effect would establish as many different rules for the determination of commercial controversies as there are states in the Union, it would justly be considered a public calamity, as it must necessarily depreciate *our negotiable securities in all the foreign markets of the world where our merchants have commercial transactions.*

"Staple and immutable rules are necessary to give confidence to those who receive such *securities* in the usual course of business, when indorsed in blank, or made payable to bearer, so that if such a bill or note is made without consideration, or be lost or stolen, and afterwards be negotiated for value to one having no knowledge of such facts, in the usual course of business, his title shall be good, and he shall be entitled to collect the amount."

A full list of authorities may be found in Crawford's Annotated Negotiable Instruments Law (3rd edition), pages 39-40, note (b), and Brannan Negotiable Instruments Law (1908) pp. 206-207.

This definition has been particularly commended by Dean Ames. (See Brannan Negotiable Instruments Law, p. 43).

The only courts which have attempted to construe away this section of the Negotiable Instruments Act and destroy uniformity have been a few inferior ones of New York, but a majority of these inferior courts are the other way. To yield to the criticism would embalm an obsolete rule of law which once prevailed in New York, in the New York State Courts prior to the adoption of the Negotiable Instruments Act in 1897, and which some lawyers have succeeded in persuading a very few of the Inferior Courts of New York to adhere to in the face of the distinct provisions of the Negotiable Instru-

ments Act, and destroy the manifest purpose of uniformity of that Act.

The Warehouse Receipts Act, recognizing the usage of the commercial world, placed warehouse receipts to order or bearer on the basis of negotiable instruments, and therefore adopted the definition in the Negotiable Instruments Act. Mr. Elkus argued against the definition before the House and Senate judiciary committees of New York, and before Governor Hughes, of New York, and before the American Bar Association\* and was overruled in each instance. This definition of the Warehouse Receipts Act has now been adopted in eighteen (18) States and Territories.

The Transfer of Stock Act, recognizing the usage of the commercial world, places certificates of stock on the basis of negotiable instruments, and therefore adopted the definition in the Negotiable Instruments Act.

The Bills of Lading Act likewise pre-eminently recognizing the usage of the commercial world makes bills of lading to order negotiable, and it is peculiarly proper that the definition in the Negotiable Instruments Act should be adopted. This definition is more important in the Bills of Lading Act than in the Warehouse Receipts Act, because order bills of lading usually accompany negotiable drafts, and each should be governed by the same law in this respect. President Hadley (of Yale University) in his classic on "Railroad Transportation," has well said (at pages 18 and 19): "We no longer produce for the home market, but for the world's markets. It is by the worlds supply and demand that prices are made. *The development of transportation has been the main instrument of this change. It has gone hand in hand with the extension of the credit system, each has supplemented the other. The bill of lading is made to serve the same purpose as the bill of exchange.*"

---

\*See Vol. 31, Reports American Bar Association (1907), pp. 55-58.

The Bill of Lading specifies the unit of quantity of a commodity; a Bill of Exchange (Draft) the unit of value; one is the necessary complement of the other.

Mr. Albert Strauss, of Messrs. J. & W. Seligman & Co., in a recent address on the Currency Problem (page 76), has elucidated the great utility of an order bill of lading accompanying a draft in the export of cotton as follows:

"The English buyer arranges with his banker to accept the drafts of the American cotton dealer, and notifies the American dealer to draw his sixty-day bill on the London bank, with shipping documents attached. The American cotton dealer borrows from his local bank to buy cotton from the farmer, whom he pays in cash; when he has gathered enough cotton for shipment, he ships on, through bills of lading, from his southern home direct to Liverpool; these bills of lading he attaches to his sixty-day draft on London and the London draft, with its documents, he attaches to a draft on his New York agent. With this New York draft he repays the local bank. The New York agent, in turn sells this sixty-day bill on London to a New York banker, and with the proceeds meets the cotton dealer's draft on him. On the other hand, the exchange banker sends the sixty-day bill to London for discount, and against the proceeds draws a demand bill on London."

Mr. Logan McPherson, in "Railroad Freight Rates in Relation to the Industry and Commerce of the United States," just published (May, 1909), after classifying order bills of lading as commercial paper, says (p. 190):

*"The [order] bill of lading is an instrument for facilitating commerce, the importance of which is not generally known. It is not only a certificate that merchandise is in transit, but a first lien upon that merchandise, in a way a title to ownership, and, as fulfilling this function, negotiable. For example, a grain dealer buying a carload of wheat at the western field may, and in the vast majority of cases does, deposit the bill*

of lading covering that car in a bank as security for a loan to its value. If that car goes through to a port where it is sold for export the loan may not be paid and the bill of lading lifted until the grain is transferred from the car to the vessel. There is a similar procedure in the case of other commodities, with the bills of lading covering raw material to the factory, and finished produce from the factory. *The [order] bill of lading thus contributes to that fluidity of the circulating medium, that celerity in the transfer of merchandise, which are striking achievements and essential requirements of current civilization."*

In Prendergast on "Credit and Its Uses" [1906], page 42, the problem is thus stated:

"A merchant having purchased a bill of goods on a specified term of credit, gives to the seller a bill of exchange, drawn on himself, representing the amount of the invoice. The seller needing money for his own business, passes this bill of exchange, with his indorsement thereon, to another from whom he has made a purchase, or to whom he may be in debt for any other reason. The third person to whom the bill of exchange is given passes it on again in liquidation of an indebtedness of his own, and so on. In this way that bill of exchange may serve in the effacement of many different accounts, and return to the drawer literally covered with indorsements. What is true as to the function of a medium of exchange, which the particular bill referred to has discharged, may be equally true of many other forms of credit instruments which may be called to mind. Promissory notes, drafts, checks, *bills of lading, and warehouse receipts are all credit instruments which can be used as mediums of exchange or substitutes for money."*

Our Commercial Law must rest on sound, economic principles and actual commercial practices. Bills, drafts, notes, checks and bills of lading are in fact and practice parts of the currency of commerce.

Mr. Elkus refers to four possible cases where frauds could be perpetrated.\* It must not be forgotten that the word "obligation" clearly means a legal obligation. In addition the suppositious cases would rarely arise in practice and the transactions to be sustained must be *bona fide*. As we have already taken occasion to say, we believe much of Mr. Elkus, difficulty arises from his failure to distinguish between "value" and "good faith," both of which are required. Successful fraud in the four instances supposed are too remote to be sufficient to modify the rule of "antecedent" liability which has now been so universally accepted. Relief can be had in cases of insolvency under the Bankruptcy Act, Section 60 (Loveland on Bankruptcy—3rd Ed., 1907, pp. 1262-1263), which remedy is expressly reserved by Section 49 of the Bills of Lading Act.†

Mr. Elkus says this is all revolutionary. The Uniform Negotiable Instruments Act provision as to value was revolutionary in New York as to the New York Courts only, but was not revolutionary even in New York in the United States Courts sitting in New York. Mr. Elkus has not pointed out a single instance of successful fraud under the definition contained in the Negotiable Instruments Act.

We can not agree with Mr. Elkus that there will be any contraction of credits, but on the contrary, to eliminate this definition of value is to diminish mobility of credit.

Mr. Elkus says this definition is an experiment. It is contrary to New York Courts' definition of "value" down to the time of the adoption of the Negotiable Instruments Act. in 1897. However, since 1842, the Federal Courts of

---

\*The four (4) instances suggested by Mr. Elkins are as follows:

- "1. An old and long outlawed debt.
- "2. A claim for damages by reason of negligence.
- "3. The duty to pay alimony.
- "4. The duty to support an aged parent."

†Section 51 in the Final Draft.

New York uniformly applied the definition of "value" as contained in the Negotiable Instruments Act.

The definition of the word "value," as to *negotiable instruments* is in harmony with the general commercial understanding and the decisions of the Supreme Court of the United States since 1842, and of most of the states. The only strongly conflicting view was that entertained by the New York Courts down to the adoption of the Negotiable Instruments Act in 1897, and this local New York view was never recognized by the Federal Courts sitting in New York but repudiated in 1842 in *Swift vs. Tyson*, *supra*.

Your Committee does not believe that in New York State there is an overwhelming state sentiment against the definition of value in the Bills of Lading Act. It is absolutely essential to New York's international trade in which Bills of Lading constitute a commodity currency passing freely from hand to hand.

It is a matter of common knowledge that intense competition exists among the cities of Boston, New York, Philadelphia and Baltimore to control, or at least divide, the port international traffic. (*Noyes on American Railroads Rates*, pp 134-135; *Hadley on Railroads Transportation*, pp. 82-99; *Meyer on Government Regulation of Railway Rates*, pp. 191, 220; *McPherson on Railroad Freight Rates*, 68, 70, 73 and 118-119; *New York Produce Exchange vs. Baltimore & O. Rd. Co. et al*, (1898), 7 I. C. C. R., 612; and particularly *Re Differential Freight Rates* (1905) 11 I. C. C. R. 13) It might be that laws which restrict the free currency of bills of lading would be a factor in determining a choice of ports through which to market the great staple commodities by means of drafts with order bills of lading attached, as in the regular practice. This is a matter for the careful consideration of the people of the State of New York in the event that the other states in which the above

enumerated cities are located adopt the Bills of Lading Act with its generally accepted definition of value.

Mr. Elkus in his letter says:

"Our clients have found, to their cost, that under the extension of the credit system of doing business, and the loose immigration laws which have turned loose upon this community some of the most unprincipled and brightest minds in Europe trained in every sort of business chicanery, a mercantile class has arisen which is absolutely devoid of business honor, and aided by attorneys of similar antecedents and equal lack of principle, seeks only to keep within the letter of the law and avoid criminal punishment."

If this be a condition local to New York City, your committee is convinced it does not prevail in the rest of the country.

Your committee hopes that the New York Merchants Association and Mr. Elkus upon carefully re-examining the whole subject, will support the present definition of "value" contained in the Uniform Bills of Lading Act.

(c) *Action:* It is to be hoped that the Bills of Lading Act will be finally acted on at the ensuing meeting of the Commissioners.

## VII. UNIFORM LAW GOVERNING COMMON CARRIERS OF FREIGHT.

The committee will, at the present time, add but little to what it said upon this subject in its Annual Report of August 21, 1908.

The "Uniform Standard Bill of Lading" recommended by the Interstate Commerce Commission on June 27, 1908, has been accepted by the carriers in Official Territory. This has been a great step in the direction of uniform rules defining the respective rights and obligations of shippers and carriers in Official Territory. The railroads in Southern Territory, how-

ever, have declined to act upon the recommendation of the Interstate Commerce Commission, and have adopted a form bill of lading for Southern Territory to be known as the "Standard Bill of Lading." Mr. Daniel H. Hayne has brought out an elaborate pamphlet in support of the "Standard Bill of Lading" for Southern Territory.\* A failure to have only one form of bill of lading throughout the United States tends to perpetuate local differences, and emphasizes the necessity of a uniform law on the subject of common carriers. By such uniform law it would be possible to have a clean order bill of lading and thereby increase its usefulness as an instrument of credit. In view of the multitude of other matters now occupying the attention of the Committee on Commercial Law, your committee recommends that the subject of a "Uniform Law Governing Common Carriers of Freight" be recommitted to the Committee on Commercial Law.

#### VIII. A UNIFORM STANDARD FORM OF BILL OF LADING.

Until a Uniform Carrier Act can be drafted and generally enacted, a *clean* Uniform Standard Form of Bill of Lading is practically impossible. In the meantime absolute uniform conditions will greatly aid in formulating a Uniform Standard Form of Bill of Lading. The American Bankers' Association, through Mr. Thomas B. Paton, its General Counsel, has addressed a communication to your committee, dated July 27, 1909, as follows:

"On the occasion of the American Bankers' Convention at Chicago, during the week of September 13, a meeting will be held of the various Bills of Lading Committees of the State Bankers' Associations in conjunction with the Committee on Bills of Lading of the American Bankers' Association.

---

\*On July 15, 1909, the Board of Railway Commissioners formulated a Uniform Bill of Lading for Canada.

"It has been suggested that at such time the representatives of various mercantile organizations, shippers and receivers associations, and other organizations and parties interested in the subject of Bills of Lading be invited to attend and participate, to the end that a broad discussion of the entire subject may be had covering forms of Bills of Lading, the laws governing them, and what remedies are necessary, having in view the nature and needs of the respective interests.

"Will you kindly advise if one or more representatives of the Commissioners on Uniform State Laws will attend at such meeting. A formal invitation will be forwarded you later.

"It is believed that much good can be accomplished by a general getting together of all interests on this occasion, and I trust for a favorable response."

It is suggested that this matter be committed to the Committee on Commercial Law with authority to attend the conference for the purpose of obtaining information to be reported at the next meeting of the Commissioners.

## IX. UNIFORM LAWS AFFECTING CREDITS.

Your committee has recieved numerous communications from individuals and Commercial Organizations as to uniform laws affecting credit. The committee agrees that laws affecting credits ought to be brought into closer harmony with the mercantile theory of credits. The committee thinks it wise to answer these communications collectively in its annual report, and will take up the various subjects of inquiry under separate heads.

(a) *Transferability of Credits:* Commercial credits and instruments of credit and securities for credits should be given the greatest mobility possible, and their transfer to *bona fide* purchasers for value duly protected by all proper legal sanctions. Before the passage of the Negotiable Instruments Act,

but limited negotiability was given to promissory notes in a number of states. By the enactment of the Negotiable Instrument Act, full negotiability has been given to drafts, notes and checks in thirty-eight States of the United States. This has resulted in closing book accounts into commercial paper, thereby largely increasing the circulating medium of commerce, and multiplying the purchasing and productive power of capital. The Certificates of Stock Act, the Warehouse Receipts Act and Bills of Lading Act are framed upon the same theory, and will turn these instruments of credit and securities for credit into parts of the commercial currency of the United States, both for domestic and foreign trade. Both debtor and creditor can secure material relief by aiding in the passage of all these acts in all the States of the Union.

(b) *Rights and Remedies in Sales of Merchandise:* Most commercial transactions ultimately culminate in a sale. All parties to a sale or contract to sell should know with certainty their obligation, rights and remedies. The Uniform Sales Act has answered these problems and both sellers and purchasers should aid in the passage of the Sales Act so that they may know in advance their obligations, rights and remedies. Debtors and creditors alike should therefore lend their assistance to the passage of the Sales Act.

(c) *Bulk Sales:* There has been much complaint as to the fraudulent sale of goods in bulk. Acts to reach this evil have been passed in the thirty-five (35) states of California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington and Wisconsin. These acts were declared unconstitutional

in Illinois, Indiana, New York, Ohio and Utah. Indiana New York, Utah and Ohio have re-enacted similar acts with the unconstitutional provisions omitted. It is possible that in the future a Uniform Bulk Sales Act will be framed so that it might become uniform throughout the United States.

(d) *Conditional Sales*: In many States conditional sales are valid without record. In other states, record is required. Where no record is required, debtors frequently perpetrate gross frauds by obtaining false credit on the faith of absolute ownership of the goods sold under conditional sales. From an economic point of view conditional sales serve a most useful purpose in enabling worthy persons with small credit to buy expensive machinery and develop numerous small industries. There ought in the near future be framed a uniform law governing conditional sales.

(e) *Chattel Mortgages*: There is a great diversity in the law of the various States upon the subject of chattel mortgages. In the near future a uniform law upon this subject should be framed.

(f) *Exemptions from Execution*: Exemptions granted in some states are unreasonable. In the near future a fair uniform exemption law should be framed.

(g) *Stays of Execution*: In some states there are laws granting unreasonable stays of execution on judgments. In the near future a fair uniform law upon the subject should be framed.

(h) *Preferences*: In many states a failing debtor may give preferences. In other preferences given within certain periods of time are invalid. There ought to be a uniform law upon the subject and a uniform period of time in which a valid preference could not be given. Some of the old abuses of preferences have been cured by the Bankruptcy Act, but there are some cases which are not reached under the Bankruptcy Act.

One example would be where a receiver was appointed upon grounds other than insolvency and without application of the party who had given the preference. This should be covered by a Uniform State Law.

(i) *Distribution of Assets*: A sharp difference of opinion prevails among courts in different States in the distribution of assets where a debt is secured. In some States a creditor may prove for the face amount of his claim, while in others only for the difference between the face of his claim and the value of the security. The latter rule is embodied in the Bankruptcy Act and in the opinion of the Committee at some future date a uniform state law should be recommended upon the subject for the States.

(j) *Accounting*: There is a popular impression that accounting means bookkeeping. Accounting, however, is the economies of business whose results are manifested through scientific bookkeeping. Accountancy is now recognized as a profession and in the present complex business conditions, accounting is important in the honest and efficient administration of business affairs. Much has been done to elevate the profession of public accounting by passing laws upon the subject of Certified Public Accountants in the twenty-one (21) States of California, Colorado, Connecticut, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, New Jersey, Ohio, Pennsylvania, Rhode Island, Utah and Washington.\* This is a matter of so much public and commercial importance that in the near future a uniform law should be framed for the more stringent regulation of accounts, accounting, accountancy and accountants.

---

\*Similar bills were introduced in Congress for the District of Columbia and in the Legislatures of Indiana, Oklahoma, Tennessee, Texas, Virginia, Wisconsin and West Virginia during the past Winter but failed to pass owing to the adjournment of Congress and the Legislatures.

## X. OTHER WORK OF THE COMMITTEE.

[Omitted for Brevity.]

Very respectfully,

FRANCIS B. JAMES, *Chairman*,  
CHARLES F. LIBBY,  
WALTER GEORGE SMITH,  
TALCOTT H. RUSSELL,  
W. O. HART,  
CHARLES THADDEUS TERRY,  
GEORGE WHITELOCK,  
*Committee.*

*Detroit, Mich., Aug. 19, 1909.*

---

## XI. APPENDIX A.

In *Williston on Sales* (1909), pp. 1036-1040, "Value" is thus discussed:

"SEC. 620. VALUE. *The importance of value is to give to a purchaser from one whose title was only voidable an indefeasible title.* The word 'value' is used in the Sales Act only in connection with the phrases 'purchaser for value,' or 'purchaser of value'. The English Sale of Goods Act contains no definition of value, and the definition in the American Sales Act is borrowed with some changes from the Negotiable Instruments Law. The question involved has been much litigated in the law of negotiable paper, and it was almost uniformly held prior to the enactment of the Negotiable Instruments Law that the cancellation or payment of an antecedent debt was sufficient value to make an indorsee a purchaser for value. By the great weight of authority, the transfer of a negotiable instrument to secure a precedent debt also made the indorsee a holder for value. There was, however, considerable dissent from this view. Many courts have taken a distinction between chattels

and negotiable paper, so that it has been generally held that taking chattels even in absolute payment of a pre-existing debt does not constitute the holder a purchaser for value. *But in England, and in some States in this country, it is held that such a person is a purchaser for value. On principle the latter view seems clearly right.* The cancellation of the debt is a surrender of something valuable. The answer made to this argument is that the original debt will be revived if the goods are taken from the purchaser, but this amounts only to saying that the value can be restored, and there is no recognized principle that a purchaser for value shall not be allowed to hold property transferred to him if the value which he has given can be and is restored to him. It is also generally held in this country that one who takes chattels as collateral security for an antecedent debt is not a purchaser for value. *Some States, however, here also regard the taker as a purchaser for value.* It is more difficult in the case of one who takes merely for security to find, logically, a giving of value than where the debt is absolutely extinguished. *It is to be observed, however, that though one who takes as security, in fact gives no value at the time of taking the goods, his subsequent conduct is almost sure to be affected by the possession of the security.* Even though forbearance is not expressly bargained for, the effect of conveying security is almost inevitably to cause creditor to forbear or diminish his efforts to obtain satisfaction of his claim from other sources. A practical reason may be added for dealing in the same way with one who takes goods as security, and one who takes goods as absolute payment. Frequently it is easy to color a transaction so that the holder of the goods may be able to make it appear that the goods were given either as payment or security, as may be most favorable to his interests. *There seems no reason to distinguish what constitutes value where negotiable paper is purchased and where property of other sorts is purchased. The*

*purchaser for value of negotiable paper may get greater rights than the purchaser for value of property of other kinds, but it seems an unnecessary and undesirable complication of the law to maintain a distinction as to what constitutes value. This is especially true so far as chattel property is concerned, since such property is frequently transferred by means of bills of lading and warehouse receipts. In view of the large degree of negotiability given such documents, it would be unfortunate to distinguish them from negotiable paper in respect to the definition of value. An attaching creditor is to be distinguished from a creditor to whom the debtor has given property for security. No transfer of title by the owner of the legal title is made by mere attachment, and an attaching creditor, therefore, acquires no greater rights in the attached property than the debtor himself had. It must be observed, however, that where the defect in the title of the property is due to fraud against creditors, this rule does not apply. For the same reason that an attaching creditor is not a purchaser for value, an assignee in bankruptcy or a trustee or assignee under a general assignment for the benefit of creditors is not a purchaser for value. Under a proper construction of the Sales Act it seems that not only is one who takes goods in payment of or as security for an antecedent debt a purchaser for value, but so also is one who takes goods, giving in return an executory promise if the terms of the promise are such that it is 'consideration sufficient to support a simple contract.' This doctrine is perhaps opposed to general legal understanding, but is not unsupported by authority. Upon principle there seems no good reason why a purchaser should be deprived of the benefit of his bargain because his obligation to pay is executory. The original owner or claimant of the goods should not have the right to deprive the innocent purchaser of the goods, but should be obliged to get relief from the enforcement, for his advantage, of the obligation of the purchaser to pay the price."*

## XII. APPENDIX B.

The following attended or were represented at the meeting of the Committee on Commercial Law at the Hotel Pontchartrain, Detroit, Mich., August 17 and 18, 1909:

The American Bankers' Association,

By Thomas B. Paton its General Counsel, of New York.

The National Association of Manufacturers,

By A. Parker Nevin, its General Counsel, of New York.

The American Warehousemen's Association,

By Albert M. Read, its President, of Washington, D. C.

The National Board of Trade,

By Albert M. Read, its Commissioner, of Washington, D. C.

The Wall Street Journal,

By John Franklin Crowell, its Associate Editor, by letter.

The National Association of Credit Men,

By Wade Millis, Adolph Sloman, Frank R. Hamburger, J. M. Richardson and A. J. Gaehr.

The Michigan Central Railroad,

By Henry Russel, its General Counsel of Detroit, Mich.

The Pennsylvania Railroad,

By A. B. Burguin, its Counsel, of Pittsburg, Pa., by letter.

The New York, New Haven & Hartford Railroad,

By F. A. Farnham, its Counsel of Boston, Mass.,  
by letter.

The Bills of Lading Committee of Railroads in Official Territory,

By Henry Russel, its Counsel, of Detroit, Mich.

The National Industrial Traffic League,

By Lewis B. Boswell of Quincy, Ill.

The Chesapeake & Ohio Railroad Company,

By A. C. Rearick, its General Attorney, by letter.

The Colorado & Southern Railroad Company,

By J. H. Bradbury, its General Auditor, by letter.

John B. Sanborn, Madison, Wisconsin.

Joseph C. France, Baltimore, Md., by letter.

Albert Strauss, of J. & W. Seligman & Co. of New York, by  
letter.

James Barr Ames, Dean of Harvard Law School, Cambridge,  
Mass.

Samuel Williston, Harvard Law School, Cambridge, Mass.

## PREFACE TO UNIFORM SALES ACT.

---

The first tentative draft of the Uniform Sale Act was prepared in 1902-3, by Professor Samuel Williston of the Harvard Law School, at the request of the Commissioners of Uniform Laws in National Conference. It was printed in the summer of 1903 and distributed with a request for criticisms. Some were received, and in the light of these a second tentative draft was presented to the Commissioners at their meeting at St. Louis, September 22, 23 and 24, 1904. The draft was then gone over, section by section, by the Commissioners. Doubtful points and changes in wording were discussed and voted upon. The draft was then recommitted to the Committee on Commercial Law, with instructions to embody the changes adopted by the Commissioners and to present a third tentative draft at the meeting of the Commissioners in August 1905.

A third draft was presented, in accordance with these instructions, at the meeting of the Commissioners at Narragansett Pier in August 1905. This draft included for the first time a number of sections on documents of title (Sections 27-40 of the Act as finally adopted). Because of these sections, it was thought best once more to recommit the draft.

At the meeting of the Conference in St. Paul in August, 1906, the final draft was adopted and recommended to the legislatures of the several states for passage. It has since been enacted in the six States and Territories of Arizona, Connecticut, Massachusetts, New Jersey, Ohio and Rhode Island.

FRANCIS B. JAMES,

Chairman of Committee on Commercial Law.

Cincinnati, Ohio, January 1, 1910.

# **AN ACT TO MAKE UNIFORM THE LAW OF SALES OF GOODS.**

---

## **PART I.**

### **FORMATION OF THE CONTRACT.**

#### **Section 1.—[CONTRACTS TO SELL AND SALES.]**

(1.) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

(2.) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

(3.) A contract to sell or a sale may be absolute or conditional.

(4.) There may be a contract to sell or a sale between one part owner and another.

The most fundamental distinction in the law of sales is between a contract to sell in the future and a present sale. The phrase "Contract of sale" used in the English Act has been discarded. An explanation of the reasons on which this and the other sections of the Act are based, fuller than is possible in brief annotations, may be found in Williston on Sales.

**Section 2.—[CAPACITY—LIABILITIES FOR NECESSARIES.]** Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery.

This section states the prevailing, though not wholly uniform, doctrine of the existing law. Mechem on Sales, §122 *et seq.* The section follows *verbatim* section 2 of the English Act except that the words "the sale and" which precede the last word in the section are omitted as introducing a possible ambiguity.

## FORMALITIES OF THE CONTRACT.

**Section 3.—[FORM OF CONTRACT OR SALE.]** Subject to the provisions of this act and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties.

This follows the first part of section 3 of the English Act. That act contains the following proviso which was omitted as unnecessary:

"Provided that nothing in this section shall affect the law relating to corporations."

**Section 4.—[STATUTE OF FRAUDS.]** [1.] A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2.) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordi-

ary course of the seller's business, the provisions of this section shall not apply.

(3.) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods.

Ohio \$2500.00; Connecticut \$100.00.

Sub-section (1) of this section follows section 4 (1) of the English Act with the exceptions stated below.

The words of the section of the English Act are somewhat altered from those of the seventeenth section of the Statute of Frauds, but the changes are such as to express more accurately the construction previously given by Lord Tenterden's Act and by the courts to the Statute of Frauds. See Chalmers (5th ed.) 16.

In the United States a provision corresponding to the seventeenth section of the Statute of Frauds exists in all the states but Alabama, Arizona, Delaware, Illinois, Kentucky, Louisiana, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia and West Virginia.

The words "or choses in action" have been inserted to settle a doubt whether such property is within the statute. Similar words or the broad term "personal property" are found in the Statutes of Frauds now in force in about twenty of the states. Mechem on Sales, §287.

The limit of price or value varies considerably in this country, fifty dollars is the commonest limit, but as many important states have no statute corresponding to this section of the Statute of Frauds, it seemed wise to raise the limit of price considerably. Sub-section (2) is intended to reproduce the rule laid down by Shaw, C. J., in *Mixer vs. Howarth*, 21 Pick. 205, and by Ames, J., in *Goddard vs. Binney*, 115 Mass. 450 which has found most support in this country. Mechem §326.

Sub-section (3) differs from the corresponding English provision, but represents the American rule, as well as the early English rule. See Mechem, §357 *et seq.*

## SUBJECT MATTER OF CONTRACT.

Section 5.—[EXISTING AND FUTURE GOODS.] (1.) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this act called "future goods."

(2.) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3.) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods.

This section follows section 5 of the English Act except that contract to sell is here as elsewhere substituted for "contract of sale" and "contract for the sale." Also in sub-section (3) "parties purport" is substituted for "seller purports." As the intention of the buyer is as important as that of the seller, the substituted expression is the more accurate.

**Section 6.—[UNDIVIDED SHARES.]** (1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2.) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears.

These provisions are new, and 6 (2) at least probably does not express the English law. It expresses the doctrine of *Kimberly vs. Patchin*, 19 N. Y. 330, which is supported by the weight of recent American authority, though there are adverse decisions. See *Mechem*, §704 *et seq.*

**Section 7.—[DESTRUCTION OF GOODS SOLD.]** (1.) Where the parties purport to sell specific goods, and the

goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2.) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale—

(a.) As avoided, or

(b.) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible.

Sub-section (1) corresponds to section 6 of the English Act. The English section does not seem to cover the contingency of deterioration or partial destruction and sub-section (2) has been added for that purpose. The section is believed to express the existing law.

**Section 8.—[DESTRUCTION OF GOODS CONTRACT-ED TO BE SOLD.]** (1.) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

(2.) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a.) As avoided, or

(b.) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not

deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible.

Sub-section (1) corresponds to section 7 of the English Act. Sub-section (2) is added to cover the case of deterioration or partial destruction. The section is believed to express the existing law.

## THE PRICE.

**Section 9.—[DEFINITION AND ASCERTAINMENT OF PRICE.]** (1.) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2.) The price may be made payable in any personal property.

(3.) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this act shall not apply.

(4.) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Sub-sections (1) and (4) are substantially the same as section 8 of the English Act. Sub-section (2) is changed from the English law which in section 1 (1) requires a "money consideration." As the rules of law applicable to barter are the same as those applicable to sale, it seemed desirable to bring cases of barter within the meaning of sale in this draft. On the other hand, different principles are often applicable where a bargain concerns real estate and such cases are, therefore, expressly excluded by sub-section (3).

**Section 10.—[SALE AT A VALUATION.]** (1.) Where there is a contract to sell or a sale of goods at a price or on

terms to be fixed by a third person, and such third person without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2.) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by Parts IV and V of this act.

Slightly varied from section 9 of the English Act.

## CONDITIONS AND WARRANTIES.

Section 11.—[EFFECT OF CONDITIONS.] (1.) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the non-performance of the condition as a breach of warranty.

(2.) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods.

Section 11 of the English Act authorizes not only the waiver of a condition, but the election to treat any condition to be fulfilled by the seller as a breach of warranty. The use of condition as including promise or warranty does not seem happy. It is very unfortunate if the distinction between conditions and promises should become obliterated, for the legal ideas are distinct and should have distinct names.

**Section 12.—[DEFINITION OF EXPRESS WARRANTY.]** Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty.

The English Act does not define when language amounts to warranty. There is considerable division of authority on the point. On theory the fundamental basis for liability on warranty is the justifiable reliance on the seller's assertions. Whether the buyer was justified in his reliance depends not on the intent of the seller, but on the natural tendency of his acts. As a practical matter, the section as drawn does not seem to set up an unreasonably high standard of morality. The tendency of the courts has been distinctly in the direction of greater strictness against seller's statements. See Mechem, page 1072, note 1.

**Section 13.—[IMPLIED WARRANTIES OF TITLE.]** In a contract to sell or a sale, unless a contrary intention appears, there is—

(1.) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass;

(2.) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

(3.) An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

(4.) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person

**professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest.**

This section is copied from the English section 12, except (4), which is an addition. There are a few American decisions and more dicta that there is no warranty of title where the vendor is out of possession. But the weight of recent authority is against this distinction. See Mechem, § 1302. (4) represents the English as well as the American law, and it seemed best to make an express provision.

**Section 14.—[IMPLIED WARRANTY IN SALE BY DESCRIPTION.]** Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

This section is identical in meaning with section 13 of the English Act.

**Section 15.—[IMPLIED WARRANTIES OF QUALITY.]** Subject to the provisions of this act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1.) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2.) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

(3.) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

(4.) In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5.) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(6.) An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith.

This section follows section 14 of the English Act.

### **SALE BY SAMPLE.**

**Section 16.—[IMPLIED WARRANTIES IN SALE BY SAMPLE.]** In the case of a contract to sell or a sale by sample:

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b.) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 47 (3).

(c.) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

This follows substantially section 15 of the English Act.

## PART II.

### TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER.

**Section 17.—[NO PROPERTY PASSES UNTIL GOODS ARE ASCERTAINED.]** Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 6.

This section follows section 16 of the English Act except for the addition of the clause beginning "but," etc. See under section 6 for explanation. of the difference between English and American law on the point referred to.

**Section 18.—[PROPERTY IN SPECIFIC GOODS PASSES WHEN PARTIES SO INTEND.]** (1.) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2.) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade and the circumstances of the case.

Follows section 17 of the English Act.

**Section 19.—[RULES FOR ASCERTAINING INTENTION.]** Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

**Rule 1.—**Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

**Rule 2.**—Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

**Rule 3.**—(1.) When goods are delivered to the buyer “on sale or return,” or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2.) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a.) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b.) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

**Rule 4.**—(1.) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2.) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 20. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

**Rule 5.**—If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon.

This section follows section 18 of the English Act with some changes. The first rule is altered by omitting from the end the words "and the buyer has notice thereof." The insertion of these words in the English Act changed the English law, which had never required notice (see Chalmers, p. 46), in order to make it conform to the Scotch law. There seems no good reason for postponing the transfer of title to this extent. There is no American authority for it.

The English Rule 3 which is omitted is as follows:

"Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done."

This rule of presumption, is artificial and has been discarded in New York and some other states. See Mechem, § 515 *et seq.* It was, therefore deemed wise to omit it.

Rule 3 (1) is not in the English Act. In that act, a "sale or return" is included in the provision corresponding to Rule 3 (2) of this draft (section 18, Rule 4 of English Act), thereby making the same presumption apply to such sales as to sales on trial. The distinction between a sale with a right to return and a sale to take effect on approval has not been taken in the English decisions, though Chalmers notices it in his annotation. 9 Harv. L. Rev. 110, *n.* 3. The distinction has been taken in this country (Mechem, § 657 *et seq.*, § 675 *et seq.*), and it seems proper to indicate it in this draft.

Rule 3 (2) is the same as Rule 4 of the English Act, except that the words "on trial or on satisfaction" are substituted for "on sale or return."

In Rule 4 (2) the last sentence is not in the English Act. It settles a disputed question in accordance with the weight of authority. See 4 Columbia L. Rev., 541; Mechem, §§ 733, 741,

Rule 5 is not in the English Act, but it represents the existing law.

## **Section 20.—[RESERVATION OF RIGHT OF POSSESSION OR PROPERTY WHEN GOODS ARE SHIPPED.]**

(1.) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(2.) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3.) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(4.) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or pay-

ment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Sub-section (1) follows with some change of expression, section 19 of the English Act except that for the somewhat loose phrase "right of disposal" is substituted "possession of property."

The first sentence of sub-section (2) is in the English Act, except that "property in the goods" is substituted for "right of disposal." The remainder of the sub-section is new.

Sub-section (3) is not in the English Act, but is thought to be warranted by the existing law.

Sub-section (4) substantially follows the English Act as far as the words "If, however." The proviso beginning "If, however," is not in the English Act. It expresses, nevertheless, the English law, because of the last factors' act. *Cahn vs. Packet Co.* (1899), 1 Q. B. 643. It undoubtedly is in accordance with mercantile understanding and convenience. The seller has trusted the buyer with the possession of the document of title and should bear the consequences. See *Mechem*, § 166.

**Section 21.—[SALE BY AUCTION.]** In the case of sale by auction—

(1.) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2.) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement

is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3.) A right to bid may be reserved expressly by or on behalf of the seller.

(4.) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

This follows section 58 of the English Act, and is believed to express the existing law.

**Section 22.—[RISK OF LOSS.]** Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a.) Where delivery of the goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b.) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

The exception (a) is not contained in the English Act. Otherwise the section is in substance the same as section 20 of the English Act. The new exception represents the weight of authority and seems sound on principle. The principal situation at which it is aimed is where a conditional sale has been made, the goods, delivered to the buyer, and very likely in use by him. The title is retained instead of taking a mortgage back, as would be done in the case of real estate. The beneficial interest is in the buyer, and the risk should be on him. See 9 Harv. L. Rev. 109; Mechem, § 635.

Where goods are sent in compliance with an order, but marked "C. O. D.," even though the effect of this were to withhold the title (as to which, however, see section 19, Rule 4 [2],) the risk would be thrown on the buyer. See Mechem, § 740, note (p. 616).

## TRANSFER OF TITLE.

**Section 23.—[SALE BY A PERSON NOT THE OWNER.]** (1.) Subject to the provisions of this act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2.) Nothing in this act, however, shall affect—

(a.) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b.) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

This follows section 21 of the English Act, except in (2) (a) "recording acts" has been added.

**Section 24.—[SALE BY ONE HAVING A VOIDABLE TITLE.]** Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods,

**provided he buys them in good faith, for value, and without notice of the seller's defect of title.**

This follows section 23 of the English Act. Section 22 of that act relates to sales in market overt and is omitted here.

**Section 25.—[SALE BY SELLER IN POSSESSION OF GOODS ALREADY SOLD.]** Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

This follows section 25 (1) of the English Act. It is comparatively new to the English law, being first enacted in the Factors' Act of 1889. But, so far as purchasers are concerned, it states in effect the principle commonly laid down in this country, that delivery is not necessary between the parties, but is as against third persons. The rights of creditors are dealt with in the next section.

**Section 26.—[CREDITORS' RIGHTS AGAINST SOLD GOODS IN SELLER'S POSSESSION.]** Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void.

The law in this country as to the effect of retention of possession on the rights of creditors is in such conflict and the different rules are locally so firmly fixed that it seemed unwise to try to provide a uniform rule. All states, however, agree that if the retention is fraudulent in fact, the sale is void as to creditors. The draft, therefore, so provides, and as to other cases—cases of constructive fraud—adopts the locally prevailing rule.

**Section 27.—[DEFINITION OF NEGOTIABLE DOCUMENTS OF TITLE.]** A document of title in which it is

stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title.

This definition, following as it does the definition of negotiable promises to pay money, represents the mercantile understanding in regard to documents of title.

**Section 28.—[NEGOTIATION OF NEGOTIABLE DOCUMENTS BY DELIVERY.]** A negotiable document of title may be negotiated by delivery,—

(a.) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the bearer, or

(b.) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee.

Here too both mercantile practice and the analogy of bills and notes are followed.

**Section 29.—[NEGOTIATION OF NEGOTIABLE DOCUMENTS BY INDORSEMENT.]** A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the in-

**dorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.**

The note to the preceding section is again applicable.

**Section 30.—[NEGOTIABLE DOCUMENTS OF TITLE MARKED "NOT NEGOTIABLE."]** If a document of title which contains an undertaking by a carrier, warehouseman or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable" or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this act. But nothing in this act contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable" "non-negotiable," or the like.

It has been until recently the custom of the railroads to stamp upon bills of lading, even though running to order or assigns, the words "not negotiable." How far the carrier is justified in attempting to limit its liability by such a device may be questioned, but as this act is concerned not with the liability of the carrier but with the rights of the various holders of the bill of lading as against each other, it seemed wise to provide merely that as between those parties the words "not negotiable" do not change the legal effect of the document.

**Section 31.—[TRANSFER OF NON-NEGOTIABLE DOCUMENTS.]** A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable document cannot be negotiated and the indorsement of such a document gives the transferee no additional right.

The distinction between warehouse receipts and bills of lading negotiable in form and those which are not does not seem to be observed in the English decisions; but it is observed in this country both in the usages of warehousemen and carriers and in the decisions of the courts. See *Hallgarten vs. Oldham*, 135 Mass. 1; *Gill vs. Frank*, 12 Oreg. 507; *Forbes vs. Boston & Lowell R. R.*, 133 Mass. 154; *Litchfield Bank vs. Elliott*, 83 Minn. 469.

**Section 32.—[WHO MAY NEGOTIATE A DOCUMENT]**  
**A negotiable document of title may be negotiated—**

(a.) By the owner thereof, or

(b.) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery.

By this section a negotiable document of title is not given the full negotiability of a bill of exchange, inasmuch as neither a thief nor a finder is within the terms of the section. By the Uniform Bills of Lading Act, however, the Commissioners on Uniform State Laws adopted the principle of full negotiability. In a jurisdiction where it is desired that the Sales Act and the Bills of Lading Act should both be passed and should be in harmony, the following substitute is suggested for Section 32 of the Sales Act as above printed:

Section 32. [Who may Negotiate a document]. A negotiable document may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the document, the bailee issuing it undertakes to deliver the goods to the order of such person, or if at the time of negotiation the document is in such form that it may be negotiated by delivery.

**Section 33.—[RIGHTS OF PERSON TO WHOM DOCUMENT HAS BEEN NEGOTIATED.]** A person to whom a negotiable document of title has been duly negotiated acquires thereby,

(a.) Such title to the goods as the person negotiating the document to him had or had ability to convey to a

**purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value, and**

**(b.) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him.**

This section follows the custom of merchants. It makes the document represent the depositor's right in the goods, so that a purchaser of the document, if he acquires a good title thereto, acquires not simply the rights of his vendor, but whatever property the original depositor had, that being what the document represented. 32 (b) makes the obligation of the warehouseman in regard to the goods negotiable.

Many states already have statutes making warehouse receipts negotiable. Mohun on Warehousemen, 944; and some states have statutes in regard to bills of lading, *ibid.* 848, but these statutes have generally been so brief and general in terms that they have been variously construed and have to some extent failed of their purpose. See *Shaw vs. Railroad Co.*, 101 U. S. 557.

**Section 34.—[RIGHTS OF PERSON TO WHOM DOCUMENT HAS BEEN TRANSFERRED.] A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.**

If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by

the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

This section states the right of any purchaser of bailed goods. One who purchases, therefore, a non-negotiable document of title would gain nothing from the transfer of the document except evidence.

**Section 35.—[TRANSFER OF NEGOTIABLE DOCUMENT WITHOUT INDORSEMENT.]** Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

This follows the analogy of bills and notes. Crawford, Neg. Inst. Law, §79.

**Section 36.—[WARRANTIES ON SALE OF DOCUMENT.]** A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

- (a.) That the document is genuine;
- (b.) That he has a legal right to negotiate or transfer it;
- (c.) That he has knowledge of no fact which would impair the validity or worth of the document, and
- (d.) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby.

This section except (d) follows the Negotiable Instruments Law, Crawford, § 115. (d) it is believed states the existing law.

**Section 37.—[INDORSER NOT A GUARANTOR.]** The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfil their respective obligations.

Mercantile usage in regard to documents of title differs from that in regard to bills and notes in the matter to which this section relates. It states the existing law, even in jurisdictions where statutes have made documents of title negotiable.

*Shaw vs. Railroad Co.*, 101 U. S. 557; *Mida vs. Geissmann*, 17 Ill. App. 207.

**Section 38.—WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, MISTAKE OR DURESS.]** The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake or duress to entrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

This section merely elaborates for the sake of clearness certain special cases within the terms of section 32.

**Section 39.—[ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE DOCUMENT HAS BEEN ISSUED.]** If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied upon

under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court.

If the mercantile theory of documents of title, such as bills of lading and warehouse receipts, were carried to its logical extent, no attachment of the goods represented by the document or levy upon them could be permitted while the negotiable document was outstanding.

It was thought best in this draft not to take the extreme position that no attachment, garnishment or levy could be made on property for which a negotiable document was outstanding, but to cover the essential practical point by making it a condition of the validity of such seizure that the negotiation of the document be enjoined or the document impounded. The following section expressly gives the court full power to aid, by injunction and otherwise, a creditor seeking to get at a negotiable document and the property covered thereby.

**Section 40.—[CREDITORS' REMEDIES TO REACH NEGOTIABLE DOCUMENTS.]** A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

As the right of legal garnishment of bailed property is limited by the preceding section, section 40 gives the creditor such rights as are included under the heads of bills of equitable attachment or in aid of execution.

---

### PART III.

#### PERFORMANCE OF THE CONTRACT.

**Section 41.—[SELLER MUST DELIVER AND BUYER ACCEPT GOODS.]** It is the duty of the seller to deliver

the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale.

This follows section 26 of the English Act.

**Section 42.—[DELIVERY AND PAYMENT ARE CONCURRENT CONDITIONS.]** Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

This follows section 27 of the English Act.

**Section 43.—[PLACE, TIME AND MANNER OF DELIVERY.]** (1.) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2.) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3.) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such

third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4.) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5.) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

This is the same as section 29 of the English Act, except that the second half of sub-section (3) has been added. The section is believed to state the existing law.

#### **Section 44.—[DELIVERY OF WRONG QUANTITY.]**

(1.) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2.) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the the whole of the goods so delivered he must pay for them at the contract rate.

(3.) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4.) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

This follows section 30 of the English Act, and is in accordance with the weight of authority. See *Mechem*, § 1157 *et seq.*

**Section 45.—[DELIVERY IN INSTALMENTS.]** (1.) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2.) Where there is a contract to sell goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it depends in each case on the terms of the contract and the circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken.

This section is slightly altered from section 31 of the English Act. The English Act, following prior English decisions, makes repudiation by one party the test of the right of the other to refuse to go on. The section here given makes the materiality of the breach the test. This is in accord with the weight of American authority. *Norrington vs. Wright*, 115 U. S. 188, 14 Harv. L. Rev. 323.

**Section 46.—[DELIVERY TO A CARRIER ON BEHALF OF THE BUYER.]** (1.) Where, in pursuance of a contract to sell or a sale, the seller is authorized or re-

quired to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 19, Rule 5, or unless a contrary intent appears.

(2.) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3.) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit.

These paragraphs follow with slight changes section 32 of the English Act. (1) is familiar law. (2) and (3) are probably in accordance with the business usage, but there is little in the way of positive law on the subject. See Chalmers (5th ed.) p. 73.

#### **Section 47.—[RIGHT TO EXAMINE THE GOODS.]**

(1.) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2.) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request,

to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3.) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination.

Section 47 (1) and (2) follow section 34 of the English Act, and state the American law also. Mechem, §1375 *et seq.* Sub-section (3) is new. It states the actual practice of the large express companies and probably states the existing law. *Wiltse vs. Barnes*, 46 Ia. 210.

**Section 48.—[WHAT CONSTITUTES ACCEPTANCE.]** The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

This follows section 35 of the English Act, and represents the American law also. Mechem, § 1379 *et seq.*

**Section 49.—[ACCEPTANCE DOES NOT BAR ACTION FOR DAMAGES.]** In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fail to give

notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor.

This section is not contained in the English Act, but section 11 (1) (a) of that act seems to authorize the buyer to accept goods and nevertheless hold the seller liable in damages. The latter half of the section in this draft imposes a qualification sanctioned by good business practice and to some extent by law, both in this country and in Europe.

The law in this country is in great conflict. See Mechem § 1388 *et seq.*

**Section 50.—[BUYER IS NOT BOUND TO RETURN GOODS WRONGLY DELIVERED.]** Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them.

This follows section 36 of the English Act. Such American authority as there is is in accord. Mechem, § 1403.

**Section 51.—[BUYER'S LIABILITY FOR FAILING TO ACCEPT DELIVERY.]** When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the rights against the goods and on the contract herein-after provided in favor of the seller when the buyer is in default.

This follows substantially section 37 of the English Act, except for the addition of breach of the entire contract as an equivalent of repudiation. See note to section 45.

## **PART IV.**

### **RIGHTS OF UNPAID SELLER AGAINST THE GOODS.**

#### **Section 52.—[DEFINITION OF UNPAID SELLER.]**

**(1.)** The seller of goods is deemed to be an unpaid seller within the meaning of this act—

**(a.)** When the whole of the price has not been paid or tendered.

**(b.)** When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

**(2.)** In this part of this act the term “seller” includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller.

This follows section 38 of the English Act, except that in (1) (b) “has been broken” is substituted for “has not been fulfilled” and “the insolvency of the buyer” has been inserted.

#### **Section 53.—[REMEDIES OF AN UNPAID SELLER.]**

**(1.)** Subject to the provisions of this act, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has—

**(a.)** A lien on the goods or right to retain them for the price while he is in possession of them;

**(b.)** In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

**(c.)** A right of resale as limited by this act;

(d.) A right to rescind the sale as limited by this act.

(2.) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

This follows section 39 of the English Act, except for the insertion of 1 (d), which is in conformity with the American law and with business usage. Mechem, § 1682.

### UNPAID SELLER'S LIEN.

SECTION 54.—[WHEN RIGHT OF LIEN MAY BE EXERCISED.] (1.) Subject to the provisions of this act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a.) Where the goods have been sold without any stipulation as to credit;

(b.) Where the goods have been sold on credit, but the term of credit has expired;

(c.) Where the buyer becomes insolvent.

(2.) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

This follows section 41 of the English Act.

Section 55.—[LIEN AFTER PART DELIVERY.] Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention.

This follows section 42 of the English Act.

**Section 56.—[WHEN LIEN IS LOST.]** (1.) The unpaid seller of goods loses his lien thereon,—

(a.) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b.) When the buyer or his agent lawfully obtains possession of the goods;

(c.) By waiver thereof.

(2.) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods.

This substantially follows section 43 of the English Act.

### **STOPPAGE IN TRANSITU.**

**Section 57.—[SELLER MAY STOP GOODS ON BUYER'S INSOLVENCY.]** Subject to the provisions of this act, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

This follows section 44 of the English Act with two exceptions. In the last clause the English Act reads, "and may retain them until payment or tender of the price." But the seller under such circumstances has also the right to resell, and under this draft the right to rescind the sale. In the second line the words "is or" have been inserted, so as to make it clear that the seller's right exists even though the buyer were insolvent at the time of the sale. See Mechem, § 1541.

**Section 58.—[WHEN GOODS ARE IN TRANSIT.]**  
(1.) Goods are in transit within the meaning of section 57,—

(a.) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(b.) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2.) Goods are no longer in transit within the meaning of section 57,

(a.) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b.) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c.) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(3.) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(4.) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods.

This follows section 45 of the English Act, but with considerable changes in wording and arrangement. The section is believed to state the existing law.

**Section 59.—[WAYS OF EXERCISING THE RIGHT TO STOP.]** (1.) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2.) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation.

This follows section 46 of the English Act, except the final proviso. The carrier should be liable to a *bona fide* transferee of its bill of lading, and unquestionably would be at common law if the transferee took for value before the stoppage. Even though the transferee took after the notice of stoppage, he is protected by section 62. The carrier therefore ought not to be obliged or allowed to surrender the goods unless the document of title is surrendered.

### **RESALE BY THE SELLER.**

**Section 60.—[WHEN AND HOW RESALE MAY BE MADE.]** (1.) Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in

case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2.) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3.) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4.) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5.) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale.

This section differs considerably from section 48 of the English Act. The wording of that section did not seem wholly adequate.

Section 48 (2) of the English Act seems to provide that the resale, whether rightly made or not, so long as it is made by a seller having a lien, gives a good title, and section 8 of the Factor's Act of 1889, providing that any seller in possession has power to make a valid sale or pledge, squares with this; but the provision seems somewhat drastic for this country. See Mechem, § 1644. The requirements as to delivery and change of possession in this

draft would generally protect the purchaser on the resale if he got delivery, and this seems far enough to go.

The point covered by (3) is much disputed. The English law requires notice where the goods are not perishable, and some cases so hold in this country. Others reach a contrary result. See *Mechem*, § 1633. On the one hand, it seems undesirable to make a resale invalid under all circumstances for lack of notice. The lapse of time or other circumstances might make it highly unjust to allow the buyer later, when perhaps market prices had risen, to make such a claim. On the other hand, it seems desirable that notice should generally be given. The provision suggested will have the effect, it is hoped, of making notice necessary unless the default of the buyer is very clear and long continued. (4) expresses the law. *Mechem*, § 1637.

### RESCISSION BY THE SELLER.

**Section 61.—[WHEN AND HOW THE SELLER MAY RESCIND THE SALE.]** (1.) An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2.) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted.

This section is not contained in the English Act, and the remedy for which the section provides is not allowed by English law. It is allowed in this country, and seems fully justified by mercantile custom and convenience. *Mechem*, § 1681, 1682; *Burdick*, p. 243.

**Section 62.—[EFFECT OF SALE OF GOODS SUBJECT TO LIEN OR STOPPAGE IN TRANSITU.]** Subject to the provisions of this act, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu.

This section is based on section 47 of the English Act. The second paragraph is, however, made more far reaching than in the English Act in order to cover a case which does not seem to have arisen or to have been considered in England, namely, where a bill of lading is transferred to an innocent purchaser for value after notice to stop has been given. The only case is *Newhall vs. Central Pac. R. R.*, 51 Cal. 345, which properly protects the purchaser.

---

## **PART V.**

### **ACTIONS FOR BREACH OF THE CONTRACT.**

#### **REMEDIES OF THE SELLER.**

**Section 63.—[ACTION FOR THE PRICE.]** (1.) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2.) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of

transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3.) Although the property in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of section 64 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price.

(1) and the first half of (2) follow the English act. The addition to (2) beginning "but," etc., is believed to be justified by the weight of American authority.

(3) is not law in England, nor is it in a number of American states. On the other hand, the New York court, in an often quoted passage, allows the remedy to an unpaid vendor generally without any qualification as to the nature of the goods. It is also allowed in the civil law. The rule suggested goes as far as convenience requires, for if the goods can readily be resold, the action for damages affords adequate relief. See Mechem, § 1694.

**Section 64.—[ACTION FOR DAMAGES FOR NON-ACCEPTANCE OF THE GOODS.]** (1.) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

(2.) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3.) Where there is an available market for the goods in question, the measure of damages is, in the absence of

special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4.) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing towards carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages.

This follows section 50 of the English Act, except (4), which is added. (4) is not law in England, but it is in this country except in Illinois. See 14 Harv. L. Rev. 422; Mechem, § 1700 *et seq.* The provision does not require the seller to cease performance in every case. There may be cases where the damage caused by stopping performance would be greater than that caused by finishing the necessary work. See *Southern Cotton Oil Co. vs. Heflin*, 99 Fed. Rep. 339. In such a case the seller might complete performance, and recover damages based on completed performance.

**Section 65.—[WHEN SELLER MAY RESCIND CONTRACT OR SALE.]** Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer.

Section 61 allows the seller to rescind the transfer of title in the cases there covered. The rescission of all contractual obligation between the parties—a more extensive right—is covered by this section, which, is believed to express the American law.

## **REMEDIES OF THE BUYER.**

**Section 66.—[ACTION FOR CONVERTING OR DETAINING GOODS.]** Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld.

This section, which is not contained in the English Act, allows trover, replevin, equitable, or other relief, as the local law may warrant.

**Section 67.—[ACTION FOR FAILING TO DELIVER GOODS.]** (1.) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for non-delivery.

(2.) The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

(3.) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

This follows section 51 of the English Act.

**Section 68.—[SPECIFIC PERFORMANCE.]** Where the seller has broken a contract to deliver specific or ascer-

tained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, [as to the court may seem just.

This follows, with slight changes in wording, section 52 of the English Act.

**Section 69.—[REMEDIES FOR BREACH OF WARRANTY.]** (1.) Where there is a breach of warranty by the seller, the buyer may, at his election,—

(a.) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

(b.) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c.) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;

(d.) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2.) When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3.) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify

the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4.) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5.) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 53.

(6.) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7.) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to

**the buyer and the value they would have had if they had answered to the warranty.**

This section differs materially from the corresponding section of the English Act—section 53. This draft allows rescission as a remedy for breach of warranty. The English law does not. In defence of the remedy of rescission, see an article by the draftsman in 16 Harv. L. Rev. 465. Further, the English Act, following *Mendel vs. Steel*, 8 M. & W. 858, allows the buyer to recoup his damages in an action for the price and thereafter to bring an action for damages. This seems erroneous, see *Watkins vs. American Bank*, 134 Fed. Rep. 36 (C. C. A.), and has been changed in this draft.

**Section 70.—[INTEREST AND SPECIAL DAMAGES.]**  
**Nothing in this act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.**

This follows section 54 of the English Act.

---

## **PART VI.**

### **INTERPRETATION.**

**Section 71.—[VARIATION OF IMPLIED OBLIGATIONS.]** Where any right, duty or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale.

This follows section 55 of the English Act.

**Section 72.—[RIGHTS MAY BE ENFORCED BY ACTION.]** Where any right, duty or liability is declared by this act, it may, unless otherwise by this act provided, be enforced by action.

This follows section 57 of the English Act.

**Section 73.—[RULE FOR CASES NOT PROVIDED FOR BY THIS ACT.]** In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods.

This provision seems obviously desirable.

**Section 74.—[INTERPRETATION SHALL GIVE EFFECT TO PURPOSE OF UNIFORMITY.]** This act shall be so interpreted and construed, as to effectuate its general purpose to make uniform the laws of those states which enact it.

The rule in this section obviously states a proper principle in regard to a statute the primary object of which is to make the law uniform. The same provisions will be found in the Uniform Transfer of Stock Act, Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act. The courts of last Resort have applied this rule to the Uniform Negotiable Instruments Act. This principle was long ago recognized in *Swift vs. Tyson* (1842) 16 Peters 1, 19, 20.

**Section 75.—[PROVISIONS NOT APPLICABLE TO MORTGAGES.]** The provisions of this act relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security.

This follows section 60 (2) of the English Act, except for the words "unless so stated." Though the draft does not generally purport to deal with the peculiar rules of mortgage law, there are a few places in which mortgage relations or similar ones are covered, e. g., sections 20 (2), 22 (a).

**SECTION 76.—[DEFINITIONS.]** (1.) In this act, unless the context or subject matter otherwise requires—"Action" includes counterclaim, set-off and suit in equity.

**"Buyer"** means a person who buys or agrees to buy goods or any legal successor in interest of such person.

**"Defendant"** includes a plaintiff against whom a right of set-off or counterclaim is asserted.

**"Delivery"** means voluntary transfer of possession from one person to another.

**"Divisible contract to sell or sale"** means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

**"Document of title to goods"** includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

**"Fault"** means wrongful act or default.

**"Fungible goods"** means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

**"Future goods"** means goods to be manufactured or acquired by the seller after the making of the contract of sale.

**"Goods"** include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

**"Order"** in sections of this act relating to documents of title means an order by indorsement on the document.

**"Person"** includes a corporation or partnership or two or more persons having a joint or common interest.

**"Plaintiff"** includes defendant asserting a right of set-off or counterclaim.

**"Property"** means the general property in goods, and not merely a special property

**"Purchaser"** includes mortgagee and pledgee.

**"Purchases"** includes taking as a mortgagee or as a pledgee.

**"Quality of Goods"** includes their state or condition.

**"Sale"** includes a bargain and sale as well as a sale and delivery.

**"Seller"** means a person who sells or agrees to sell goods, or any legal successor in the interest of such person.

**"Specific goods"** means goods indentified and agreed upon at the time a contract to sell or a sale is made.

**"Value"** is any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as security therefor.

(2.) A thing is done "in good faith" within the meaning of this act when it is in fact done honestly, whether it be done negligently or not.

(3.) A person is insolvent within the meaning of this act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

**(4.) Goods are in a “deliverable state” within the meaning of this act when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.**

The only one of these definitions requiring comment is that of value, which follows the weight of authority at common law and the provision of the Uniform Negotiable Instruments Act as intended by its framers. In regard to property other than negotiable instruments the law of many states does not regard an antecedent debt as value; but it seems desirable to have a single rule for what constitutes valuable consideration, and mercantile convenience support the one adopted. It is supported, moreover, by the law of England and a few of our states. See Williston on Sales § 619.

**Section 76a.—[ACT DOES NOT APPLY TO EXISTING SALES OR CONTRACTS TO SELL.]** None of the provisions of this act shall apply to any sale, or to any contract to sell, made prior to the taking effect of this Act.

This section was added in 1909 primarily to avoid a question which was raised in Massachusetts where the Act was passed without this section. It was questioned whether Section 4 of the Act as it related to the enforcement of a sale, or contract to sell, rather than to its original validity, did not apply to any litigation arising after the passage of the Act without reference to when the sale or contract to sell which was the subject of the litigation, arose. See Williston on Sales p 1042. A similar section is found in all the other Uniform Acts.

**Section 76b.—[NO REPEAL OF UNIFORM WAREHOUSE RECEIPT ACT OR UNIFORM BILLS OF LADING ACT.]** Nothing in this Act or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the Act to make Uniform the Law of Warehouse Receipts, or of the Act to Make Uniform the Law of Bills of Lading.

This section was added in 1909 especially to avoid the possible effect of Section 32 of the Uniform Sales Act upon Section 31 of the Uniform Bills of Lading Act. Where neither the Uniform Warehouse Receipts Act nor the Uniform Bills of Lading Act has been passed prior to the passage of the Uniform Sales Act, this section may be omitted.

**Section 77.—[INCONSISTENT LEGISLATION REPEALED.]** All acts or parts of acts inconsistent with this act are hereby repealed except as provided in section 76b.

**Section 78.—[TIME WHEN THE ACT TAKES EFFECT]**  
This act shall take effect on the.....day of.....  
one thousand nine hundred and.....

**Section 79.—[NAME OF ACT.]** This act may be cited as the Uniform Sales Act.

## **PREFACE TO UNIFORM TRANSFER OF STOCK ACT.**

---

In 1906 the Commissioners on Uniform State Laws in National Conference employed Prof. Samuel Williston, of the Harvard Law School, to prepare a Draft of an Act to make Uniform the Law of Transfer of Title to Shares of Stock in Corporations. A first tentative draft was considered by the Committee on Commercial Law of the Commissioners on Uniform State Laws at Portland, Maine, August 21st, 1907, and by the Commissioners at the same place, August 22d, 23d and 24th, 1907. As a result of the discussion a second tentative draft was prepared and discussed by the Committee on Commercial Law at the New Washington Hotel, Seattle, Washington, August 20th, 1908, and by the Commissioners at the same place August 21, 22 and 24, 1908. Thereupon a third tentative draft was prepared and carefully examined at a meeting of the Committee on Commercial Law at the Waldorf Astoria, New York City, April 19 and 20, 1909. A fourth tentative draft was circulated July 15th, 1909 and exhaustively discussed at a meeting of the Committee on Commercial Law at the Hotel Pontchartrain, Detroit, Mich., August 17th and 18th, 1909. The Commissioners on Uniform State Laws, at their Nineteenth National Conference, held at the Wayne County Court House, Detroit, Michigan, August 19th, 20th, 21st and 23rd, 1909, carefully considered the same section by section, and duly indorsed the Act and recommended it to the legislatures of the various States for passage.

**FRANCIS B. JAMES,**

Chairman Committee on Commercial Law.

Cincinnati, Ohio, Jan. 1, 1910.

## **AN ACT TO MAKE UNIFORM THE LAW OF TRANSFER OF SHARES OF STOCK IN CORPORATIONS.**

Be it enacted, etc., as follows:

**Section 1.—[HOW TITLE TO CERTIFICATES AND SHARES  
MAY BE TRANSFERRED.]** Title to a certificate and to the shares represented thereby can be transferred only,

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent.

The provisions of this section are in accordance with the existing law (see Cook on Corporations, Section 373, et seq.), except that the transfer of the certificate is here made to operate as a transfer of the shares, whereas at common law it is the registry on the books of the company which makes the complete transfer. The reason for the change is in order that the certificate may, to the fullest extent possible, be the representative of the shares. This is the fundamental purpose of the whole act, and is in accordance with the mercantile usage. The transfer on the books of the corporation becomes thus like the record of a deed of real estate under a registry system.

**Section 2.—[POWERS OF THOSE LACKING FULL LEGAL  
CAPACITY AND OF FIDUCIARIES NOT ENLARGED.]** Nothing in this Act shall be construed as enlarging the powers of an infant

or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney.

This section is inserted for the sake of avoiding any possible question as to the matter to which it relates.

**Section 3.—[CORPORATION NOT FORBIDDEN TO TREAT REGISTERED HOLDER AS OWNER.]** Nothing in this Act shall be construed as forbidding a corporation,

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares.

This provision is necessary for the protection of the corporation.

**Section 4.—[TITLE DERIVED FROM CERTIFICATE EXTINGUISHES TITLE DERIVED FROM A SEPARATE DOCUMENT.]** The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document.

The case here contemplated arises where a transferee obtains a certificate with a separate assignment or power of attorney. If the certificate is not delivered, and a mere assignment is made, title to the certificate will not pass under Section 1. There will be, in effect, merely a contract to transfer under Section 10. Even though the certificate is delivered, and therefore the transferee obtains title by the separate assignment, it seems proper that the transferee should, at his peril, keep the certificate from deceiving purchasers who may

by any chance thereafter obtain it duly indorsed or assigned by the person appearing on the face of it, to be the owner. As the first purchaser can immediately get a certificate in his own name, he has an easy way to protect himself from mischance.

**Section 5.—[WHO MAY DELIVER A CERTIFICATE.]**

The delivery of a certificate to transfer title in accordance with the provisions of Section 1, is effectual, except as provided in Section 7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

This section gives full negotiability to certificates of stock. In so doing it goes beyond the existing law but is in accordance with mercantile custom. In many cases a similar result has been reached on the theory of estoppel if the real owner's negligence contributed to the theft or unauthorized dealing with an indorsed certificate. See Cook on Corporations, c. XXI; also § 437.

**Section 6.—[INDORSEMENT EFFECTUAL IN SPITE OF FRAUD, DURESS, MISTAKE, REVOCATION, DEATH, INCAPACITY OR LACK OF CONSIDERATION OR AUTHORITY.]** The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in Section 7, though the indorser or transferor,

(a) was induced by fraud, duress or mistake, to make the indorsement or delivery, or

(b) has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(c) has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(d) has received no consideration.

By the previous section, if the certificate is properly indorsed, the delivery may be made by any one; by the present section, the indorsement, if genuine, is sufficient, in spite of the circumstances enumerated.

So far as sub-section (a) is concerned, this section states the existing law. Cook on Corporations, §§ 349, 438. So far as sub-sections (b) and (c) are concerned, there is a dearth of authority. Doubtless a revocation by death, or otherwise, subsequent to the creation of an interest for value in the stock, would be generally held ineffectual. Lowell on the Transfer

of Stock, § § 44, 42; *Dickinson v. Central Bank*, 129 Mass. 279; *Hess v. Rau*, 95 N. Y. 359. Probably, too, if the possession of an indorsed certificate of stock were intrusted to another for the purpose of sale, subsequent revocation of the power to sell, or even death of the owner would not invalidate the title of a purchaser from the person so intrusted. The doctrine of estoppel would probably be invoked. The case may be supposed, however, of a certificate indorsed during the lifetime but not delivered until after the death of the owner. It is probable that the existing law would hold such an indorsement ineffectual, yet a purchaser without notice should, it seems, be protected.

**Section 7.—[RESCISSION OF TRANSFER.]** If the indorsement or delivery of a certificate,

(a) was procured by fraud or duress, or

(b) was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made

(c) without authority from the owner, or

(d) after the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

(1) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or,

(2) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate, or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it.

Though a purchaser for value gets title under the circumstances detailed in section 6, no title should be valid against the original owner unless a purchaser for value has acquired the certificate. See *Cook*, § 356.

**Section 8.—[RESCISSION OF TRANSFER OF CERTIFICATE DOES NOT INVALIDATE SUBSEQUENT TRANSFER BY TRANSFEREE IN POSSESSION.]** Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside,

nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

This section is based on the same reasoning as Section 4. Section 4, indeed, would perhaps cover the case provided for in Section 8, if no new certificates had been taken out.

**Section 9.—[DELIVERY OF UNINDORSED CERTIFICATE IMPOSES OBLIGATION TO INDORSE.]** The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

This section follows the rule established as to negotiable instruments by Section 79, Negotiable Instruments Law, and in regard to Warehouse receipts, by Section 43 of the Warehouse Receipts Act. It probably expresses the existing law. See Cook, § 465.

**Section 10.—[INEFFECTUAL ATTEMPT TO TRANSFER AMOUNTS TO A PROMISE TO TRANSFER.]** An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

It is a general principle of the Law of Sales that when a seller undertakes to sell property to which for any reason he cannot transfer title immediately, the attempted sale implies an obligation on the part of the seller to

transfer title thereafter. *Lunn v. Thornton*, 1 C. B. 379; *Bates v. Smith*, 83 Mich. 347; Sales Act, Section 5 (3).

**Section 11.—[WARRANTIES ON SALE OF CERTIFICATE.]**

A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants—

- (a) That the certificate is genuine,
- (b) That he has a legal right to transfer it, and
- (c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim.

This section follows Section 44 of the Warehouse Receipts Act, and Section 35 of the Bills of Lading Act, which were adapted from the Negotiable Instruments Law. There seems no reason why the implied warranties in case of a sale of certificates of stock should not be the same as in the case of negotiable paper. This perhaps goes beyond the existing law but seems to conform to the tendency of the law of implied warranty. See Cook, § 296.

**Section 12.—[NO WARRANTY IMPLIED FROM ACCEPTING PAYMENT OF A DEBT.]** A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.

The point covered by this section has not been raised in litigation on certificates of stock. It has been, however, frequently raised when bills of lading have been used as security. For this reason a section similar to that here presented has been inserted both in the Draft Act on Bills of Lading, and the Act on Warehouse Receipts. As the same question may arise in regard to certificates of stock it was thought best to cover the point.

**Section 13.—[NO ATTACHMENT OR LEVY UPON SHARES UNLESS CERTIFICATE SURRENDERED OR TRANSFER EN-**

**JOINED.]** No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

This section, like the similar provision in the Warehouse Receipts Act, and the Sales Act, is an advance upon existing law. It is an advance which seems even more necessary in regard to the certificates of stock than in the case of bills of lading or warehouse receipts. Common law does not universally protect the purchaser of a stock certificate against attachment on the books of the company, even though the transfer of the certificate preceded the attachment. Cook, § 487, et seq. By statute, in Massachusetts one who attaches stock on the books of a corporation prior to a sale of the certificate, is postponed to even a subsequent purchaser. *Clews v. Friedman*, 180 Mass. 556. There is obviously chance for the greatest fraud if this is not so. Yet if the subsequent purchaser is preferred, it is clearly improper ever to allow an attachment of stock unless some method is adopted to prevent a subsequent transfer of the certificate. Otherwise it is impossible to realize on the attached property since there would always be a possibility of a subsequent transfer of the original certificate.

**Section 14.—[CREDITOR'S REMEDIES TO REACH CERTIFICATE.]** A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

As in the Sales Act, and Warehouse Receipts Act, it seems essential to provide creditors with the fullest possible means of reaching the negotiable documents which their debtor has, since the creditor is deprived of other methods of realizing on the property represented by the document.

**Section 15.—[THERE SHALL BE NO LIEN OR RESTRICTION UNLESS INDICATED ON CERTIFICATE.]** There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall

be no restriction upon the transfer of shares so represented by virtue of any by-law of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

This is in pursuance of the general policy of this Act to make certificates of stock so far as possible the sole representatives of the shares which they represent.

**Section 16.—[ALTERATION OF CERTIFICATE DOES NOT DIVEST TITLE TO SHARES.]** The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

Where the law makes title to shares of stock depend upon the registry in the books of the company, alteration of the certificate obviously cannot destroy title. But if the certificate is itself to be the muniment of title, a provision seems necessary. Even for fraudulent alteration, forfeiture of the stock represented by the certificate, seems too severe a penalty.

**Section 17.—[LOST OR DESTROYED CERTIFICATE.]** Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the Court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from

liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

This section represents the prevailing rule. Cook, §§ 359, 403.

**Section 18.—[RULE FOR CASES NOT PROVIDED FOR BY THIS ACT.]** In any case not provided for by this Act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

A similar provision is commonly inserted when an attempt is made to reduce to statutory form a topic of the law, as in the Negotiable Instruments Act, the Sales Act and the Warehouse Receipts Act.

**Section 19.—[INTERPRETATION SHALL GIVE EFFECT TO PURPOSE OF UNIFORMITY.]** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

This section is contained in the Sales Act and Warehouse Receipts Act in order to induce courts, so far as possible, to consider the object of uniformity.

Although the Negotiable Instruments Act does not contain this section yet the courts of last resort have rightly applied this rule. See Brannan on Negotiable Instruments Law (1908), page 1, note 2, and cases there cited.

**Section 20.—[DEFINITION OF INDORSEMENT.]** A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered.

**Section 21.—[DEFINITION OF PERSON APPEARING TO BE THE OWNER OF CERTIFICATE.]** The person to whom a certificate was originally issued is the person appearing by the

certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect.

**Section 22.—[OTHER DEFINITIONS.]** (1) In this Act, unless the context or subject matter otherwise requires—

“Certificate” means a certificate of stock in a corporation organized under the laws of this State or of another State whose laws are consistent with this Act.

“Delivery” means voluntary transfer of possession from one person to another.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Shares” means a share or shares of stock in a corporation organized under the laws of this State or of another State whose laws are consistent with this Act.

“State” includes State, Territory, District and Insular Possession of the United States.

“Transfer” means transfer of legal title.

“Title” means legal title and does not include a merely equitable or beneficial ownership or interest.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done “in good faith” within the meaning of this Act, when it is in fact done honestly, whether it be done negligently or not.

A few only of these definitions require comment. As to the definition of a certificate and of a share, it should be said that it seems impossible for a state to make effectual enactment as to the nature and effect of certificates for shares, issued by corporations chartered in other states, unless such states have a similar Act. The definitions of "value" and "good faith" follow the definitions which have been made in previous laws recommended by the Conference of Commissioners on Uniform Laws. The same reasons that recommended the definitions in previous enactments are applicable here also.

**Section 23.—[ACT DOES NOT APPLY TO EXISTING CERTIFICATES.]** The provisions of this Act apply only to certificates issued after the taking effect of this Act.

Unlike bills and notes, warehouse receipts and bills of lading, certificates of stock not only may be but very frequently are held for many years without transfer. It might therefore be desirable to make the Act apply to existing certificates; but this would probably be unconstitutional. The date of the certificate will give the purchaser evidence of the applicability of this Act.

**Section 24.—[INCONSISTENT LEGISLATION REPEALED.]** All Acts or parts of Acts inconsistent with this Act are hereby repealed.

**Section 25.—[TIME WHEN THE ACT TAKES EFFECT.]** This Act shall take effect on the.....day of....., one thousand nine hundred and.....

**Section 26.—[NAME OF ACT.]** This Act may be cited as the Uniform Stock Transfer Act.

## **PREFACE TO THE UNIFORM NEGOTIABLE INSTRUMENTS ACT.**

---

In 1878, Mr. M. D. Chalmers, an English Barrister, published a digest of the law of bills of exchange, promissory notes and checks. Some two years later he read a paper before the Institute of Bankers advocating the codification of the law of negotiable instruments. The Associated Chambers of Commerce of England, including the Institute of Bankers, directed him to prepare a code, which was introduced in the House of Commons by Sir John Lubbock. That body referred it to a select committee with Sir Farrer Herschell as Chairman. Having been favorably reported, it passed the House, was sent to the Lords, and there referred to a committee of which Lord Bramwell was Chairman. This Committee inserted a few amendments, and reported it to the House of Lords, which passed it, and the amendments being agreed to by the House of Commons, the bill became a law in the year 1882. Since that time it has been adopted in more than forty of the English colonies, and dependencies, and thus a uniform law of negotiable instruments exists throughout Great Britain, and her "dominions beyond the sea."

In 1895 the Commissioners on Uniform State Laws in National Conference through its committee consisting of Hon. Lyman D. Brewster, of Connecticut, Hon. Henry C. Wilcox of New York and Hon. Frank Bergen of New Jersey, employed Mr. John J. Crawford, of the New York Bar, to draft a bill. This was printed with copious annotations and sent to each member of the conference, prominent lawyers, law professors and American and English judges, with an invitation for suggestions and criticisms and submitted to the Conference in 1896, discussed section by section, amended and adopted.

The Uniform Negotiable Instruments Act has now been enacted in the thirty-eight (38) States and Territories of Alabama, Arizona, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

It has not yet been enacted in the twelve States of Arkansas, California, Delaware, Georgia, Indiana, Maine, Minnesota, Mississippi, South Carolina, South Dakota, Texas and Vermont; in the one Territory of Alaska; in the two Insular Possessions of Porto Rico and Phillipine Islands and the one Isthmian Possession of the Panama Canal Zone; a total of sixteen States, Territories, Isthmian and Insular Possessions.\*

FRANCIS B. JAMES.

Chairman, Committee on Commercial Law.

Cincinnati, Ohio, Jan. 1, 1910.

\*On October 15, 1909 Mr. Francis Rawle, Ex-President of the American Bar Association, addressed a letter to Hon. Frederick G. Bromberg of Mobile, Alabama, asking for a copy of the proceedings of the Alabama State Bar Association for 1886. The answer of Mr. Frederick G. Bromberg is here inserted as of great historic value:

*Mobile, Alabama, October 18, 1909.*

Hon. Francis Rawle,  
Broad Street & South Penn Square,  
Philadelphia, Pennsylvania.

Dear Sir:—

I have yours of the 15th inst. asking to procure for you, if I can, the proceedings of the Alabama State Bar Association of 1886.

I regret very much to be unable to comply with this request; it causes me all the more regret not to do this, because in that report of the transactions appears the full report of the Committee on Correspondence of which I was Chairman, and in which I suggested the English Bill of Exchange Act as a model to be adopted by all the States in the United States, and, also, by the

United States and contains a literal copy of the English Act as part of the report and a circular letter addressed to the Bar Associations of the respective States and the American Bar Association.

A copy of this circular letter was mailed by myself to the Secretary of each State Bar Association and to the Secretary of the American Bar Association in that year. It has, therefore, always been a surprise to me that that high minded body of men should have claimed that the idea of the Uniform Negotiable Acts originated with the American Bar Association, when in fact it originated with the Alabama State Bar Association in 1886.

Yours very truly,

F. G. BROMBERG.

# **AN ACT TO MAKE UNIFORM THE LAW OF NEGOTIABLE INSTRUMENTS.**

---

## **Be it enacted, etc., as follows:**

In view of the fact that thirteen years have elapsed since the Uniform Negotiable Instruments Act was perfected, the original foot notes of the draftsman have been omitted because many of the sections of the Act have been subject to judicial interpretation, construction and application since it was drafted. All persons interested are referred to "The Negotiable Instruments Law" by Prof. Joseph Dodridge Brannan of the Harvard Law School, published by The Harvard Law Review Association and a second edition of which is soon to be published by The W. H. Anderson Co. of Cincinnati, Ohio, and "The Annotated Negotiable Instruments Law" by John J. Crawford of the New York Bar, published by Baker, Voorhis & Company.

## **TITLE I.**

### **NEGOTIABLE INSTRUMENTS IN GENERAL.**

#### **ARTICLE I.**

#### **FORM AND INTERPRETATION.**

**Section 1.—[FORM OF NEGOTIABLE INSTRUMENT]**  
An instrument to be negotiable must conform to the following requirements:—

(1.) It must be in writing and signed by the maker or drawer;

(2.) Must contain an unconditional promise or order to pay a sum certain in money:

(3.) Must be payable on demand, or at a fixed or determinable future time;

(4.) Must be payable to order or to bearer; and

(5.) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

**Section 2.—[CERTAINTY AS TO SUM; WHAT CONSTITUTES.]** The sum payable is a sum certain within the meaning of this act, although it is to be paid:—

- (1.) With interest; or
- (2.) By stated instalments; or
- (3.) By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or
- (4.) With exchange, whether at a fixed rate or at the current rate; or
- (5.) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

**Section 3.—[WHEN PROMISE IS UNCONDITIONAL.]** An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:—

- (1.) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
- (2.) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

**Section 4.—[DETERMINABLE FUTURE TIME; WHAT CONSTITUTES.]** An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:—

- (1.) At a fixed period after date or sight; or
- (2.) On or before a fixed or determinable future time specified therein; or
- (3.) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

**Section 5.—[ADDITIONAL PROVISIONS NOT AFFECTING NEGOTIABILITY.]** An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:—

(1.) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

(2.) Authorizes a confession of judgment if the instrument be not paid at maturity; or

(3.) Waives the benefit of any law intended for the advantage or protection of the obligor; or

(4.) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

**Section 6.—[OMISSIONS; SEAL: PARTICULAR MONEY.]** The validity and negotiable character of an instrument are not effected by the fact that:—

(1.) It is not dated; or

(2.) Does not specify the value given, or that any value has been given therefor; or

(3.) Does not specify the place where it is drawn or the place where it is payable; or

(4.) Bears a seal; or

(5.) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

**Section 7.—[WHEN PAYABLE ON DEMAND.]** An instrument is payable on demand:—

(1.) Where it is expressed to be payable on demand, or at sight, or on presentation; or

(2.) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

**Section 8.—[WHEN PAYABLE TO ORDER]** The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

(1.) A payee who is not maker, drawer, or drawee; or

(2.) The drawer or maker; or

(3.) The drawee; or

(4.) Two or more payees jointly; or

(5.) One or some of several payees; or

(6.) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

**Section 9.—[WHEN PAYABLE TO BEARER.]** The instrument is payable to bearer:

(1.) When it is expressed to be so payable; or

(2.) When it is payable to a person named therein or bearer; or

(3.) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

(4.) When the name of the payee does not purport to be the name of any person; or

(5.) When the only or last indorsement is an indorsement in blank.

**Section 10.—[TERMS WHEN SUFFICIENT.]** The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

**Section 11.—[DATE, PRESUMPTION AS TO.]** Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

**Section 12.—[ANTE-DATED AND POST-DATED.]** The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

**Section 13.—[WHEN DATE MAY BE INSERTED.]** Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

**Section 14.—[BLANKS; WHEN MAY BE FILLED.]** Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima*

facia authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Section 15.—[INCOMPLETE INSTRUMENT NOT DELIVERED.] Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Section 16.—[DELIVERY: WHEN EFFECTUAL: WHEN PRESUMED.] Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party

whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

**Section 17.—[CONSTRUCTION WHERE INSTRUMENT IS AMBIGUOUS.]** Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

(1.) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2.) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3.) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4.) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5.) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6.) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7.) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

**Section 18.—[LIABILITY OF PERSON SIGNING IN TRADE OR ASSUMED NAME.]** No person is liable on the

instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

**Section 19.—[SIGNATURE BY AGENT; AUTHORITY; HOW SHOWN.]** The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

**Section 20.—[LIABILITY OF PERSON SIGNING AS AGENT, ETC.]** Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

**Section 21.—[SIGNATURE BY PROCURATION; EFFECT OF.]** A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

**Section 22.—[EFFECT OF INDORSEMENT BY INFANT OR CORPORATION.]** The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

**Section 23.—[FORGED SIGNATURE; EFFECT OF.]** When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly

inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

---

## ARTICLE II.

### CONSIDERATION.

Section 24.—[PRESUMPTION OF CONSIDERATION.] Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Section 25.—[CONSIDERATION, WHAT CONSTITUTES.] Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Section 26.—[WHAT CONSTITUTES HOLDER FOR VALUE.] Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Section 27.—[WHEN LIEN ON INSTRUMENT CONSTITUTES HOLDER FOR VALUE.] Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Section 28.—[EFFECT OF WANT OF CONSIDERATION.] Absence or failure of consideration is matter of defense as against any person not a holder in due course;

and partial failure of consideration is a defence pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

**Section 29.—[LIABILITY OF ACCOMMODATION PARTY.]** An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

---

### ARTICLE III. NEGOTIATION.

**Section 30.—[WHAT CONSTITUTES NEGOTIATION]** An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery,

**Section 31.—[INDORSEMENT; HOW MADE.]** The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

**Section 32.—[INDORSEMENT MUST BE OF ENTIRE INSTRUMENT.]** The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instru-

ment to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

**Section 33.—[KINDS OF INDORSEMENT.]** An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

**Section 34.—[SPECIAL INDORSEMENT; INDORSEMENT IN BLANK.]** A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

**Section 35.—[BLANK INDORSEMENT; HOW CHANGED TO SPECIAL INDORSEMENT.]** The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

**Section 36.—[WHEN INDORSEMENT RESTRICTIVE.]** An indorsement is restrictive, which either,—

(1.) Prohibits the further negotiation of the instrument; or

(2.) Constitutes the indorsee the agent of the indorser; or

(3.) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

**Section 37.—[EFFECT OF RESTRICTING INDORSEMENT; RIGHTS OF INDORSEE.]** A restrictive indorsement confers upon the indorsee the right,—

- (1.) To receive payment of the instrument;
- (2.) To bring any action thereon that the indorser could bring;
- (3.) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

**Section 38.—[QUALIFIED INDORSEMENT.]** A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

**Section 39.—[CONDITIONAL INDORSEMENT.]** Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

**Section 40.—[INDORSEMENT OF INSTRUMENT PAYABLE TO BEARER.]** Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

**Section 41.—[INDORSEMENT WHERE PAYABLE TO TWO OR MORE PERSONS.]** Where an instrument is payable to the order of two or more payees or indorsees who

are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

**Section 42.—[EFFECT OF INSTRUMENT DRAWN OR INDORSED TO A PERSON AS CASHIER.]** Where an instrument is drawn or indorsed to a person as "Cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

**Section 43.—[INDORSEMENT WHERE NAME IS MISSPELLED, ET CETERA.]** Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

**Section 44.—[INDORSEMENT IN REPRESENTATIVE CAPACITY.]** Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

**Section 45.—[TIME OF INDORSEMENT; PRESUMPTION.]** Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

**Section 46.—[PLACE OF INDORSEMENT; PRESUMPTION.]** Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

**Section 47.—[CONTINUATION OF NEGOTIABLE CHARACTER.]** An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

**Section 48.—[STRIKING OUT INDORSEMENT.]** The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

**Section 49.—[TRANSFER WITHOUT INDORSEMENT; EFFECT OF.]** Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

**Section 50.—[WHEN PRIOR PARTY MAY NEGOTIATE INSTRUMENT.]** Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

---

## ARTICLE IV.

### RIGHTS OF THE HOLDER.

**Section 51.—[RIGHT OF HOLDER TO SUE; PAYMENT.]** The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

**Section 52.—[WHAT CONSTITUTES A HOLDER IN DUE COURSE.]** A holder in due course is a holder who has taken the instrument under the following conditions:—

- (1.) That it is complete and regular upon its face;

(2.) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(3.) That he took it in good faith and for value;

(4.) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

**Section 53.—[WHEN PERSON NOT DEEMED HOLDER IN DUE COURSE.]** Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

**Section 54.—[NOTICE BEFORE FULL AMOUNT PAID.]** Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

**Section 55.—[WHEN TITLE DEFECTIVE.]** The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

**Section 56.—[WHAT CONSTITUTES NOTICE OF DEFECT.]** To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

**Section 57.—[RIGHTS OF HOLDER IN DUE COURSE.]** A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

**Section 58.—[WHEN SUBJECT TO ORIGINAL DEFENSES.]** In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

**Section 59.—[WHO DEEMED HOLDER IN DUE COURSE.]** Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

---

## ARTICLE V.

### LIABILITIES OF PARTIES.

**Section 60.—[LIABILITY OF MAKER.]** The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to endorse.

**Section 61.—[LIABILITY OF DRAWER.]** The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

**Section 62.—[LIABILITY OF ACCEPTOR.]** The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits,—

(1.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2.) The existence of the payee and his then capacity to endorse.

**Section 63.—[WHEN PERSON DEEMED INDORSER.]** A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

**Section 64.—[LIABILITY OF IRREGULAR INDORSER.]** Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:—

(1.) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2.) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3.) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

**Section 65.—[WARRANTY WHERE NEGOTIATION BY DELIVERY, ET CETERA.]** Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:—

(1.) That the instrument is genuine and in all respects what it purports to be;

(2.) That he has a good title to it;

(3.) That all prior parties had capacity to contract;

(4.) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

**Section 66.—[LIABILITY OF GENERAL INDORSER.]** Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

(1.) The matters and things mentioned in subdivision one, two and three of the next preceding section; and

(2.) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, accordeng to its tenor, and that if it be dishonored,

and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

**Section 67.—[LIABILITY OF INDORSER WHERE PAPER NEGOTIABLE BY DELIVERY.]** Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

**Section 68.—[ORDER IN WHICH INDORSERS ARE LIABLE.]** As respects one another indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

**Section 69.—[LIABILITY OF AN AGENT OR BROKER.]** Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section sixty-five of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

---

## ARTICLE VI.

### PRESENTMENT FOR PAYMENT.

**Section 70.—[EFFECT OF WANT OF DEMAND ON PRINCIPAL DEBTOR.]** Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

**Section 71.—[PRESENTMENT WHERE INSTRUMENT IS NOT PAYABLE ON DEMAND AND WHERE PAYABLE ON DEMAND.]** Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

**Section 72.—[WHAT CONSTITUTES A SUFFICIENT PRESENTMENT.]** Presentment for payment, to be sufficient, must be made:—

(1.) By the holder, or by some person authorized to receive payment on his behalf;

(2.) At a reasonable hour on a business day;

(3.) At a proper place as herein defined;

(4.) To the person primarily liable on the instrument or if he is absent or inaccessible, to any person found at the place where the presentment is made.

**Section 73.—[PLACE OF PRESENTMENT.]** Presentment for payment is made at the proper place:—

(1.) Where a place of payment is specified in the instrument and it is there presented;

(2.) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented.

(3.) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4.) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

**Section 74.—[INSTRUMENT MUST BE EXHIBITED.]** The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

**Section 75.—[PRESENTMENT WHERE INSTRUMENT PAYABLE AT BANK.]** Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

**Section 76.—[PRESENTMENT WHERE PRINCIPAL DEBTOR IS DEAD.]** Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

**Section 77.—[PRESENTMENT TO PERSONS LIABLE AS PARTNERS.]** Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

**Section 78.—[PRESENTMENT TO JOINT DEBTORS.]** Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

**Section 79.—[WHEN PRESENTMENT NOT REQUIRED TO CHARGE THE DRAWER.]** Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

**Section 80.—[WHEN PRESENTMENT NOT REQUIRED TO CHARGE THE INDORSER.]** Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

**Section 81.—[WHEN DELAY IN MAKING PRESENTMENT IS EXCUSED.]** Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

**Section 82.—[WHEN PRESENTMENT MAY BE DISPENSED WITH.]** Presentment for payment is dispensed with:—

- (1.) Where after the exercise of reasonable diligence presentment as required by this act cannot be made;
- (2.) Where the drawee is a fictitious person;
- (3.) By waiver of presentment, express or implied.

**Section 83.—[WHEN INSTRUMENT DISHONORED BY NON-PAYMENT.]** The instrument is dishonored by non-payment when,—

- (1.) It is duly presented for payment and payment is refused or cannot be obtained; or
- (2.) Presentment is excused and the instrument is overdue and unpaid.

**Section 84.—[LIABILITY OF PERSON SECONDARILY LIABLE, WHEN INSTRUMENT DISHONORED.]** Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

**Section 85.—[TIME OF MATURITY.]** Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due [or becoming payable] on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

The words in brackets [or becoming payable] have been inserted for the sake of clearness. They are found in the New York, Missouri and Virginia Acts. This section having twice used the word "payable" then uses the words "falling due." This has raised doubts in the minds of some where Friday a legal holiday and paper matures on Friday. These words are inserted to remove any possible doubt. In Crawford on Negotiable Instruments (3rd Ed. 1908) 110-1 it is argued that there is no doubt and that it is unnecessary to insert these words. Properly interpreted, there is no necessity for inserting these words, but as legislation is cheaper than litigation, it is thought wise for those states, which have not yet enacted this Act, to insert these words.

**Section 86.—[TIME; HOW COMPUTED.]** Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

**Section 87.—[RULE WHERE INSTRUMENT PAYABLE AT BANK.]** Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

**Section 88.—[WHAT CONSTITUTED PAYMENT IN DUE COURSE.]** Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

## ARTICLE VII.

### NOTICE OF DISHONOR.

**Section 89.—[TO WHOM NOTICE OF DISHONOR MUST BE GIVEN.]** Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

**Section 90.—[BY WHOM GIVEN.]** The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

**Section 91.—[NOTICE GIVEN BY AGENT.]** Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

**Section 92.—[EFFECT OF NOTICE GIVEN ON BEHALF OF HOLDER.]** Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

**Section 93.—[EFFECT WHERE NOTICE IS GIVEN BY PARTY ENTITLED THERETO.]** Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

**Section 94.—[WHEN AGENT MAY GIVE NOTICE.]** Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the par-

ties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder.

**Section 95.—[WHEN NOTICE SUFFICIENT.]** A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

**Section 96.—[FORM OF NOTICE.]** The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

**Section 97.—[TO WHOM NOTICE MAY BE GIVEN.]** Notice of dishonor may be given either to the party himself or to his agent in that behalf.

**Section 98.—[NOTICE WHERE PARTY IS DEAD.]** When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

**Section 99.—[NOTICE TO PARTNERS.]** Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

**Section 100.—[NOTICE TO PERSONS JOINTLY LIABLE.]** Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

**Section 101.—[NOTICE TO BANKRUPT.]** Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

**Section 102.—[TIME WITHIN WHICH NOTICE MUST BE GIVEN.]** Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.

**Section 103.—[WHERE PARTIES RESIDE IN SAME PLACE.]** Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times.—

(1.) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

(2.) If given at his residence, it must be given before the usual hours of rest on the day following.

(3.) If sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following.

**Section 104.—[WHERE PARTIES RESIDE IN DIFFERENT PLACES.]** Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:—

(1.) If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of

dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

(2.) If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision.

**Section 105.—[WHEN SENDER DEEMED TO HAVE GIVEN DUE NOTICE.]** Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails,

**Section 106.—[DEPOSIT IN POST-OFFICE; WHAT CONSTITUTES.]** Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter box under the control of the post-office department.

**Section 107.—[NOTICE TO SUBSEQUENT PARTY; TIME OF.]** Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

**Section 108.—[WHERE NOTICE MUST BE SENT.]** Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:—

(1.) Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or

(2.) If he live in one place, and have his place of business in another, notice may be sent to either place; or

(3.) If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

**Section 109.—[WAIVER OF NOTICE.]** Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

**Section 110.—[WHOM AFFECTED BY WAIVER.]** Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

**Section 111.—[WAIVER OF PROTEST.]** A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

**Section 112.—[WHEN NOTICE IS DISPENSED WITH.]** Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

**Section 113.—[DELAY IN GIVING NOTICE: HOW EXCUSED.]** Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to this default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

**Section 114.—[WHEN NOTICE NEED NOT BE GIVEN TO DRAWER.]** Notice of dishonor is not required to be given to the drawer in either of the following cases.—

- (1.) Where the drawer and drawee are the same person ;
- (2.) When the drawee is a fictitious person or a person not having capacity to contract ;
- (3.) When the drawer is the person to whom the instrument is presented for payment.
- (4.) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument ;
- (5.) Where the drawer has countermanded payment.

**Section 115.**—[WHEN NOTICE NEED NOT BE GIVEN TO INDORSER.] Notice of dishonor is not required to be given to an indorser in either of the following cases:—

- (1.) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument ;
- (2.) Where the indorser is the person to whom the instrument is presented for payment ;
- (3.) Where the instrument was made or accepted for his accommodation.

**Section 116.**—[NOTICE OF NON-PAYMENT WHERE ACCEPTANCE REFUSED.] Where due notice of dishonor by non-acceptance has been given notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

**Section 117.**—[EFFECT OF OMISSION TO GIVE NOTICE OF NON-ACCEPTANCE.] An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

**Section 118.**—[WHEN PROTEST NEED NOT BE MADE; WHEN MUST BE MADE.] Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

## ARTICLE VIII.

### DISCHARGE OF NEGOTIABLE INSTRUMENTS.

**Section 119.—[INSTRUMENT; HOW DISCHARGED.]**  
A negotiable instrument is discharged:—

- (1.) By payment in due course by or on behalf of the principal debtor;
- (2.) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
- (3.) By the intentional cancellation thereof by the holder;
- (4.) By any other act which will discharge a simple contract for the payment of money;
- (5.) When the principal debtor becomes the holder of the instrument at or after maturity in his own right;

**Section 120.—[WHEN PERSONS SECONDARILY LIABLE ON, DISCHARGED.]** A person secondarily liable on the instrument is discharged:—

- (1.) By any act which discharges the instrument;
- (2.) By the intentional cancellation of his signature by the holder;
- (3.) By the discharge of a prior party;
- (4.) By a valid tender of payment made by a prior party;
- (5.) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- (6.) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

**Section 121. — [RIGHT OF PARTY WHO DISCHARGES INSTRUMENT.]** Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:—

(1.) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2.) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

**Section 122.—[RENUNCIATION BY HOLDER.]** The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

**Section 123.—[CANCELLATION; UNINTENTIONAL; BURDEN OF PROOF.]** A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

**Section 124.—[ALTERATION OF INSTRUMENT; EFFECT OF.]** Where a negotiable instrument is materially altered without the assent of all parties liable thereon,

it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

**Section 125.—[WHAT CONSTITUTES A MATERIAL ALTERATION.]** Any alteration which changes,—

- (1.) The date;
- (2.) The sum payable, either for principal or interest;
- (3.) The time or place of payment;
- (4.) The number or the relations of the parties;
- (5.) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

---

## **TITLE II.**

### **BILLS OF EXCHANGE.**

#### **ARTICLE I.**

##### **FORM AND INTERPRETATION.**

**Section 126.—[BILL OF EXCHANGE DEFINED.]** A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

**Section 127.—[BILL NOT AN ASSIGNMENT OF FUNDS IN HANDS OF DRAWEE.]** A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

**Section 128.—[BILL ADDRESSED TO MORE THAN ONE DRAWEE.]** A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

**Section 129.—[INLAND AND FOREIGN BILLS OF EXCHANGE.]** An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

**Section 130.—[WHEN BILL MAY BE TREATED AS PROMISSORY NOTE.]** Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

**Section 131.—[REFEREE IN CASE OF NEED.]** The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

## ARTICLE II.

### ACCEPTANCE.

**Section 132.**—[ACCEPTANCE; HOW MADE, ET CETERA.] The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

**Section 133.**—[HOLDER ENTITLED TO ACCEPTANCE ON FACE OF BILL.] The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

**Section 134.**—[ACCEPTANCE BY SEPARATE INSTRUMENT.] Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

**Section 135.**—[PROMISE TO ACCEPT; WHEN EQUIVALENT TO ACCEPTANCE.] An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof, receives the bill for value.

**Section 136.**—[TIME ALLOWED DRAWEE TO ACCEPT.] The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation.

**Section 137.**—[LIABILITY OF DRAWEE RETAINING OR DESTROYING BILL.] Where a drawee to whom a bill is delivered for acceptance destroys the same, or re-

fuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

**Section 138.—[ACCEPTANCE OF INCOMPLETE BILL.]** A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

**Section 139.—[KINDS OF ACCEPTANCES.]** An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

**Section 140.—[WHAT CONSTITUTES A GENERAL ACCEPTANCE.]** An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

**Section 141.—[QUALIFIED ACCEPTANCE.]** An acceptance is qualified, which is:—

(1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2.) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3.) Local, that is to say, an acceptance to pay only at a particular place;

(4.) Qualified as to time;

(5.) The acceptance of some one or more of the drawees, but not of all.

**Section 142.—[RIGHTS OF PARTIES AS TO QUALIFIED ACCEPTANCE.]** The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

---

### ARTICLE III.

#### PRESENTMENT FOR ACCEPTANCE.

**Section 143.—[WHEN PRESENTMENT FOR ACCEPTANCE MUST BE MADE.]** Presentment for acceptance must be made:—

(1.) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2.) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3.) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

**Section 144.—[WHEN FAILURE TO PRESENT RELEASES DRAWER AND INDORSER.]** Except as herein otherwise provided, the holder of a bill which is required

by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

**Section 145.—[PRESENTMENT; HOW MADE.]** Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

(1.) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

(2.) Where the drawee is dead, presentment may be made to his personal representative;

(3.) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

**Section 146.—[ON WHAT DAYS PRESENTMENT MAY BE MADE.]** A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

**Section 147.—[PRESENTMENT WHERE TIME IS INSUFFICIENT.]** Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before

presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

**Section 148.—[WHERE PRESENTMENT IS EXCUSED.]** Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:—

(1.) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

(2.) Where, after the exercise of reasonable diligence, presentment cannot be made.

(3.) Where, although presentment has been irregular, acceptance has been refused on some other ground.

**Section 149.—[WHEN DISHONORED BY NON-ACCEPTANCE.]** A bill is dishonored by non-acceptance,—

(1.) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

(2.) When presentment for acceptance is excused and the bill is not accepted.

**Section 150.—[DUTY OF HOLDER WHERE BILL NOT ACCEPTED.]** Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

**Section 151.—[RIGHTS OF HOLDER WHERE BILL NOT ACCEPTED.]** When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

## ARTICLE IV.

### PROTEST.

**Section 152.—[IN WHAT CASES PROTEST NECESSARY.]** Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

**Section 153.—[PROTEST; HOW MADE.]** The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:—

- (1.) The time and place of presentment;
- (2.) The fact that presentment was made and the manner thereof;
- (3.) The cause or reason for protesting the bill;
- (4.) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

**Section 154.—[PROTEST; BY WHOM MADE.]** Protest may be made by,—

- (1.) A notary public; or
- (2.) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

**Section 155.—[PROTEST; WHEN TO BE MADE.]** When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein

provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

**Section 156.—[PROTEST; WHERE MADE.]** A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

**Section 157.—[PROTEST BOTH FOR NON-ACCEPTANCE AND NON-PAYMENT.]** A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

**Section 158.—[PROTEST BEFORE MATURITY WHERE ACCEPTOR INSOLVENT.]** Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

**Section 159.—[WHEN PROTEST DISPENSED WITH.]** Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

**Section 160.—[PROTEST WHERE BILL IS LOST, ET CETERA.]** When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

## ARTICLE V.

### ACCEPTANCE FOR HONOR.

**Section 161.—[WHEN BILL MAY BE ACCEPTED FOR HONOR.]** Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

**Section 162.—[ACCEPTANCE FOR HONOR; HOW MADE.]** An acceptance for honor *supra* protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

**Section 163.—[WHEN DEEMED TO BE AN ACCEPTANCE FOR HONOR OF THE DRAWER.]** Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

**Section 164.—[LIABILITY OF THE ACCEPTOR FOR HONOR.]** The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

**Section 165.—[AGREEMENT OF ACCEPTOR FOR HONOR.]** The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall

not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him.

**Section 166.—[MATURITY OF BILL PAYABLE AFTER SIGHT; ACCEPTED FOR HONOR.]** Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

**Section 167.—[PROTEST OF BILL ACCEPTED FOR HONOR, ET CETERA.]** Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

**Section 168.—[PRESENTMENT FOR PAYMENT TO ACCEPTOR FOR HONOR; HOW MADE.]** Presentment for payment to the acceptor for honor must be made as follows:—

(1.) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

(2.) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four.

**Section 169.—[WHEN DELAY IN MAKING PRESENTMENT IS EXCUSED.]** The provisions of section eighty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

**Section 170.—[DISHONOR OF BILL BY ACCEPTOR FOR HONOR.]** When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

## ARTICLE VI.

### PAYMENT FOR HONOR.

Section 171.—[WHO MAY MAKE PAYMENT FOR HONOR.] Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Section 172.—[PAYMENT FOR HONOR; HOW MADE.] The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

Section 173.—[DECLARATION BEFORE PAYMENT FOR HONOR.] The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Section 174.—[PREFERENCE OF PARTIES OFFERING TO PAY FOR HONOR.] Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Section 175.—[EFFECT ON SUBSEQUENT PARTIES WHERE BILL IS PAID FOR HONOR.] Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Section 176.—[WHERE HOLDER REFUSES TO RECEIVE PAYMENT SUPRA PROTEST.] Where the holder

of a bill refuses to receive payment *supra protest*, he loses his right of recourse against any party who would have been discharged by such payment.

**Section 177.—[RIGHTS OF PAYER FOR HONOR.]** The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

---

## ARTICLE VII.

### BILLS IN A SET.

**Section 178.—[BILLS IN SETS CONSTITUTE ONE BILL.]** Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

**Section 179.—[RIGHT OF HOLDERS WHERE DIFFERENT PARTS ARE NEGOTIATED.]** Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

**Section 180.—[LIABILITY OF HOLDER WHO INDORSES TWO OR MORE PARTS OF A SET TO DIFFERENT PERSONS.]** Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

**Section 181.—[ACCEPTANCE OF BILLS DRAWN IN SETS.]** The acceptance may be written on any part and

it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

**Section 182.—[PAYMENT BY ACCEPTOR OF BILLS DRAWN IN SETS.]** When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

**Section 183.—[EFFECT OF DISCHARGING ONE OF A SET.]** Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

---

### **TITLE III.**

#### **PROMISSORY NOTES AND CHECKS.**

##### **ARTICLE I.**

**Section 184.—[PROMISSORY NOTE DEFINED.]** A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

**Section 185.—[CHECK DEFINED.]** A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

**Section 186.—[WITHIN WHAT TIME A CHECK MUST BE PRESENTED.]** A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

**Section 187.—[CERTIFICATION OF CHECK; EFFECT OF.]** Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

**Section 188.—[EFFECT WHERE THE HOLDER OF CHECK PROCURES IT TO BE CERTIFIED.]** Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

**Section 189.—[WHEN CHECK OPERATES AS AN ASSIGNMENT.]** A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

---

## **TITLE IV.**

### **GENERAL PROVISIONS.**

#### **ARTICLE I.**

**Section 190.—[SHORT TITLE.]** This act may be cited as the Uniform Negotiable Instruments Act.

Section 190 as originally drafted reads "This Act shall be known as the Negotiable Instruments Law." In order to bring the language of this section into harmony with the language of the Uniform Sales Act (Section 79), the Uniform Warehouse Receipts Act (Section 62), the Uniform Transfer of Stock Act (Section 26), and the Uniform Bills of Lading Act (Section 57), the language has been slightly changed.

The Uniform Sales Act (Section 74), the Uniform Warehouse Receipts Act (Section 57), the Uniform Transfer of Stock Act (Section 19) and the Uniform Bills of Lading Act (Section 52) provide that:—"This Act shall be so

interpreted and construed as to affectuate its general purpose to make uniform the law of those States which enact it." While the Uniform Negotiable Instruments Act does not contain this section, yet the courts have interpreted it in harmony with the principles of this section. *Rockfield vs First National Bank of Springfield*, 77 Ohio St. 311; *Downey vs O'Keefe*, 26 R. I. 571; *Thorpe vs White* 188 Mass. 333; *Toole vs Crafts* 193 Mass. 110; *Gibbs vs Guaraglia* (N. J.) 67 Atlantic Rep. 81; *Baumeister vs Kuntz* (Fla.) 42 South. Rep. 886; *Farquahar Co. vs Higham* (N. D.) 112 N. W. Rep. 557; *Vander Ploeg vs Van Zunk* (Iowa) 112 N. W. 807; In *Rockfield vs First National Bank*, supra, Mr. Justice Spear said (pp 329-331): "It is so much a matter of common knowledge as to make it proper to take judicial notice of the fact, that the Act herein considered was enacted because of an effort on the part of the bar of many, if not all of the states of the Union, to bring about a uniform system of law respecting negotiable instruments. \*\*\*\* That this purpose was prominent in the minds of the members of our General Assembly in the enactment of the Ohio Act is shown by the title of the Act itself which is: 'An Act to establish a law uniform with the laws of other states on negotiable instruments'. The desirability of such legislation had been long felt by commercial people of our state as well as by the judiciary and the bar at large. \*\*\*\* The purpose of the act is to bring Ohio into harmony with the other states of the Union on so important a branch of the law as the relation of parties to commercial paper."

*Cicero* (in *De Re Publica*) said: "Nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac; sed et omnis gentis, et omni tempore, una lex, et sempiterna et immutabilis continebit." (*Cicero, De Re Publica*, III, 28-33: Tauchnitz, Leipzig, 1865, p.214.) The principle announced by Cicero was adopted by Lord Mansfield in *Luke vs Lyde*, 2 Burr. 883, 887 and embodied in our system of American Jurisprudence by Mr. Justice Story in *Swift vs Tyson* (1842) 16 Peters 1, at pp. 19-20. The rule thus laid down is a fundamental one for the interpretation of the law merchant whether unwritten or embodied in a statute.

**Section 191.—[DEFINITIONS AND MEANING OF TERMS.]** In this act, unless the context otherwise requires,—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

**"Bill"** means bill of exchange, and **"note"** means negotiable promissory note.

**"Delivery"** means transfer of possession, actual or constructive, from one person to another.

**"Holder"** means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

**"Indorsement"** means an indorsement completed by delivery.

**"Instrument"** means negotiable instrument.

**"Issue"** means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

**"Person"** includes a body of persons, whether incorporated or not.

**"Value"** means valuable consideration.

**"Written"** includes printed, and **"writing"** includes print.

**Section 192.—[PERSON PRIMARILY LIABLE ON INSTRUMENT.]** The person **"primarily"** liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are **"secondarily"** liable.

**Section 193.—[REASONABLE TIME, WHAT CONSTITUTES.]** In determining what is a **"reasonable time"** or an **"unreasonable time,"** regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

**Section 194.—[TIME, HOW COMPUTED; WHEN LAST DAY FALLS ON HOLIDAY.]** Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

**Section 195.—[APPLICATION OF ACT.]** The provisions of this act do not apply to negotiable instruments made and delivered prior to the [taking effect] hereof.

Section 195 as drafted uses the word "passage." The words in brackets [taking effect] have been inserted in place of the word "passage." The reason for the change is, that the uniform Acts usually provide that they shall take effect at some date in the future. In such cases confusion would arise as to the status of commercial paper issued between the passage of the Act and taking effect of the Act. To avoid litigation it is suggested that this section be enacted with the above change.

**Section 196.—[CASES NOT PROVIDED FOR IN ACT.]** In any case not provided for in this act the rules of [law and equity including] the law merchant shall govern.

Section 196 as drafted reads "In any case not provided for in this Act the rules of the law merchant shall govern." The words in brackets [law and equity including] were inserted to bring this section into harmony with the Uniform Sales Act (Section 73), the Uniform Warehouse Receipts Act (Section 56), the Uniform Transfer of Stock Act (Section 18) and the Uniform Bills of Lading Act (Section 51). The object of sections, such as these, is to clearly point out that no one of these acts pretends to be a complete codification of the whole law upon each topic but that there are cases not provided for in each of these acts. Another purpose is to leave room for the growth of new usages and customs so that none of these acts should put the law merchant in a straight jacket and thus prevent the further expansion of the law merchant.

**Section 197.—[REPEALS.]** All acts and parts of acts inconsistent with this act are hereby repealed.

Section 197 as drafted reads "of the laws enumerated in the schedules hereto annexed that portion specified in the last column is repealed." The language of this section as originally drafted is clearly inappropriate in a number of states. In a state in which the constitution requires that an Act which repeals other acts shall enumerate the repealed acts, this section must be redrafted in accordance with the local constitution.

**Section 198.—[TIME WHEN ACT TAKES EFFECT.]** This [act] shall take effect on

Section 198 as drafted uses the word "chapter." In many states this term is inappropriate therefor the word in brackets [Act] has been inserted in lieu of the word "chapter."

## **PREFACE TO UNIFORM WAREHOUSE RECEIPTS ACT.**

---

The Commissioners on Uniform State Laws in National Conference in 1904 engaged Professor Samuel Williston of the Harvard Law School, and Mr. Barry Mohun of the Washington Bar, to draft an Act to make Uniform the Law of Warehouse Receipts. A first tentative draft was submitted to the Commissioners at its meeting at Narragansett Pier on August 18, 1905. A number of changes were made and the Act recommitted to prepare a new draft.

During the ensuing winter and spring the act was carefully considered at meetings of the American Warehousemen's Association and of a committee of the American Bankers' Association. The draftsmen and members of the Committee on Commercial Law were present at these meetings and explained the provisions of the Act. Suggestions as to the usages in the warehouse business and as to the necessities of commerce were made by the warehousemen and bankers, with the added light furnished by suggestions and criticisms. A third tentative draft was prepared and submitted to the Commissioners at St. Paul in August, 1906. This draft was considered section by section, both by the Committee on Commercial Law and by the Commissioners as a whole, and with some changes which have been embodied in the following pages, was adopted and recommended to the legislatures of the several states for passage.

The Uniform Warehouse Receipts Act has already been enacted in the eighteen (18) States and Territories of California, Connecticut, Iowa, Illinois, Kansas, Louisiana, Michigan, Massachusetts, Nebraska, New Jersey, New York, New Mexico, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia and Wisconsin.

FRANCIS B. JAMES,

Chairman Committee on Commercial Law.  
Cincinnati, Ohio, Jan. 1, 1910.

# **AN ACT TO MAKE UNIFORM THE LAW OF WAREHOUSE RECEIPTS.**

---

**Be it enacted, etc., as follows:**

## **PART I**

### **THE ISSUE OF WAREHOUSE RECEIPTS.**

**Section 1.—[PERSONS WHO MAY ISSUE RECEIPTS.]**  
**Warehouse receipts may be issued by any warehouseman.**

This should be read in connection with the definition of warehouseman in section 58. On account of varying local conditions and laws it seemed impracticable in an act intended to be passed in many States to fix limits as to who might carry on the business of warehousing.

**Section 2.—[FORM OF RECEIPTS.      ESSENTIAL TERMS.]** Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

(a) The location of the warehouse where the goods are stored,

(b) The date of issue of the receipt,

(c) The consecutive number of the receipt,

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(e) The rate of storage charges,

(f) A description of the goods or of the packages containing them,

(g) The signature of the warehouseman, which may be made by his authorized agent,

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

**A Warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.**

This section is in accordance with business custom except (h) and (i). As some abuses have arisen from warehousemen issuing receipts on their own goods, it seemed wise that when they issued negotiable receipts in this way, the document should carry notice of the fact on its face. See Section 53 in this connection. It is obvious also that negotiable receipts should show on their face what charges are claimed against the goods. See further as to this Section 30.

Though it is desired that all warehouse receipts shall conform to the rules here laid down, the essential thing is that negotiable receipts shall do so, and as to them only is a sanction imposed for failing to insert the statutory terms.

**Section 3.—[FORM OF RECEIPTS. WHAT TERMS MAY BE INSERTED.] A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—**

(a) Be contrary to the provisions of this act.

(b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Public policy demands the limitation in (b). See Schouler on Bailments [1905] §§36, 362 *et seq.*

**Section 4.—[DEFINITION OF NON-NEGOTIABLE RECEIPT.]** A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

See note to the following section.

**Section 5.—[DEFINITION OF NEGOTIABLE RECEIPT.]** A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted, shall be void.

This draft makes a fundamental distinction throughout between negotiable and non-negotiable receipts. The former is the negotiable representative of the goods, the latter is merely evidence of an ordinary contract of bailment. This distinction accords with mercantile usage. *Hallgarten v. Oldham* 135 Mass. 1.

**Section 6.—[DUPLICATE RECEIPTS MUST BE SO MARKED.]** When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

It is the practice of most if not all careful warehousemen not to issue duplicate negotiable receipts at all, and such issues are to be discouraged, but following a large number of statutes already existing this act instead of forbidding the practice altogether safeguards it by requiring the receipt to be plainly marked.

**Section 7.—[FAILURE TO MARK "NOT NEGOTIABLE."]** A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "non-nego-

liable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

This section like the preceding is aimed at obvious frauds. Both follow much existing legislation. See passages in Mohun on Warehousemen indexed at pp. 943, 944.

---

## PART II.

### OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS.

Section 8.—[OBLIGATION OF WAREHOUSEMAN TO DELIVER.] A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien,

(b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or

depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

See the definition of "holder" in Section 58. The requirement of signing an acknowledgment that the goods have been received is in accordance with universal business usage, though it is doubtful if the usage has been supported by law. As the usage is reasonable it is adopted as the rule of this act. The burden imposed on the warehouseman in the last paragraph agrees with existing law. *Burnell v. N. Y. C. R. R. Co.* 45 N. Y. 184.

**Section 9.—[JUSTIFICATION OF WAREHOUSEMAN IN DELIVERING.]** A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods, or his agent,

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

This section gives the warehouseman a justification in some cases where he would not under the preceding section be bound to deliver, *e. g.* If a thief presented a negotiable receipt properly indorsed, the warehouseman would be protected if he delivered the goods innocently.

**Section 10.—[WAREHOUSEMAN'S LIABILITY FOR MISDELIVERY.]** Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession

**in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either**

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

This is believed to represent the law. See Schouler, [1905] §§44, 45; *Velsian v. Lewis*, 15 Oreg. 539.

**Section 11.—[NEGOTIABLE RECEIPTS MUST BE CANCELLED WHEN GOODS DELIVERED.]** Except as provided in Section 36, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

It is an obvious requirement of the mercantile use of negotiable receipts that the goods shall remain in the warehouse as long as the receipt is outstanding, and statutes similar in effect to this section are in force in some States. Mohun, 2, 24, 355, 382, 538, 593.

The section does not apply to non-negotiable receipts, because usage and mercantile necessity frequently require delivery in such cases without surrender of the receipt.

**Section 12.—[NEGOTIABLE RECEIPTS MUST BE CANCELED OR MARKED WHEN PART OF GOODS DELIVERED.]** Except as provided in Section 36, where a warehouseman delivers part of the goods for which he had

issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

This section follows as to partial deliveries the rule of the preceding.

**Section 13.—[ALTERED RECEIPTS.]** The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

- (a) Immaterial,
- (b) Authorized, or
- (c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

This section adopts the prevailing rule of the common law. Even fraudulent alteration cannot divest the title of the owner of stored goods and the warehouseman is therefor liable to redeliver them to the owner.

#### **Section 14.—[LOST OR DESTROYED RECEIPTS.]**

Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

As it is for obvious reasons forbidden and indeed made a criminal offence [Section 52] to issue an additional negotiable receipt, it is evident that even when receipts are supposed to have been lost or destroyed, great care must be used in permitting such an issue or what is the same thing the redelivery of the goods without the surrender of the original receipt. It is not enough that the parties agree that the goods shall be given up or a new receipt issued. It is essential that a court shall pass upon the question and make sure that the original is lost or destroyed and that a proper indemnity is taken, for the rights of possible innocent purchasers of the original receipt are involved.

#### **Section 15.—[EFFECT OF DUPLICATE RECEIPTS.]**

A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

See note to Section 6.

**Section 16.—[WAREHOUSEMAN CAN NOT SET UP TITLE IN HIMSELF.]** No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

This states the common law. 3 Am. & Eng. Encyc. of Law, 759.

**Section 17.—[INTERPLEADER OF ADVERSE CLAIMANTS.]** If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

The case of *Crawshay v. Thornton*, 2 Myl & C. 1 unfortunately held that interpleader was not a proper remedy in such a case. It is, however, the only adequate remedy and is probably generally allowed in this country. 3 Am. & Eng. Encyc. of Law, 762.

**Section 18.—[WAREHOUSEMAN HAS REASONABLE TIME TO DETERMINE VALIDITY OF CLAIMS.]** If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

It seems obviously proper that the warehouseman should be protected for such brief period as may be necessary to enable him to determine the rights of the claimants.

**Section 19.—[ADVERSE TITLE IS NO DEFENSE EXCEPT AS ABOVE PROVIDED.]** Except as provided in the two preceding sections and in sections 9 and 36, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

Except as qualified by the preceding sections, the common law doctrine is here stated that a bailee can not set up the title of a third person as an excuse for failure to deliver the goods. See 3 Am. & Eng. Encyc. 758.

**Section 20.—[LIABILITY FOR NON-EXISTENCE OR MISDESCRIPTION OF GOODS.]** A warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

This section imposes on the warehouseman a stricter rule than that generally in force in this country in that it makes a warehouseman liable for an innocent misdescription of the goods. See *Hale v. Milwaukee Dock Co.* 23 Wis. 276; but as the warehouseman can readily protect himself by inserting in the receipt only what he knows, namely the marks on the goods or the statements of the depositor regarding them, it seems best to make the warehouseman responsible for what he asserts.

**Section 21.—[LIABILITY FOR CARE OF GOODS.]** A warehouseman shall be liable for any loss or injury to

the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

This states the common law. 3 Am. & Eng. Encyc. 750.

**Section 22.—[GOODS MUST BE KEPT SEPARATE.]** Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and re-delivery of the goods deposited.

As to most merchandise, of course, the warehouseman's duty is to keep the goods of each depositor separate. The following section provides for the exception to the rule:

**Section 23.—[FUNGIBLE GOODS MAY BE COMMINGLED, IF WAREHOUSEMAN AUTHORIZED.]** If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

An exceptional rule prevails in this country by custom as to grain and similar merchandise. See definition of "fungible" in Section 58.

**Section 24.—[LIABILITY OF WAREHOUSEMAN TO DEPOSITORS OF COMMINGLED GOODS.]** The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate

This section and the two preceding sections state the general American law.

**Section 25.—[ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE RECEIPT HAS BEEN ISSUED.]** If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

See note to Section 39 of the Sales Act.

**Section 26.—[CREDITORS' REMEDIES TO REACH NEGOTIABLE RECEIPTS.]** A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

This section is to enable the court to give the fullest relief possible in making the negotiable receipt available to the creditor since the goods can not otherwise be taken from the warehouseman's possession.

**Section 27.—[WHAT CLAIMS ARE INCLUDED IN THE WAREHOUSEMAN'S LIEN.]** Subject to the provisions of Section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coop-

ering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

This extends the common law, but has the precedent of other statutes see Mohun, 37, 86, 124, 203, 215, 352, 546, 553, 706, 772, 801, 833.

**Section 28.—[AGAINST WHAT PROPERTY THE LIEN MAY BE ENFORCED.]** Subject to the provisions of Section 30 a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

**Section 29.—[HOW THE LIEN MAY BE LOST.]** A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

This section merely states the rule of the common law.

**Section 30.—[NEGOTIABLE RECEIPT MUST STATE CHARGES FOR WHICH LIEN IS CLAIMED.]** If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless

the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of Section 27, although the amount of the charges so enumerated is not stated in the receipt.

This section is obviously requisite for the credit of negotiable receipts. See note to Section 2.

**Section 31.—[WAREHOUSEMAN NEED NOT DELIVER UNTIL LIEN IS SATISFIED.]** A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

This is the rule of the common law.

**Section 32.—[WAREHOUSEMAN'S LIEN DOES NOT PRECLUDE OTHER REMEDIES.]** Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

This section also only restates the common law.

**Section 33.—[SATISFACTION OF LIEN BY SALE.]** A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due,

(b) A brief description of the goods against which the lien exists,

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of

such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this Act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

This section is copied with slight changes from the New York Law. Mohun 553.

**Section 34.—[PERISHABLE AND HAZARDOUS GOODS.]** If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of the proceeding section.

This section is copied with slight changes from Massachusetts Rev. Laws, c. 69, sec. 9.

**Section 35.—[OTHER METHODS OF ENFORCING LIENS.]** The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

It did not seem wise in view of the wide differences in procedure between some of the states to make the method of enforcing a lien provided by Section 33 exclusive.

**Section 36.—[EFFECT OF SALE.]** After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

This section necessarily qualifies the right of a purchaser of a negotiable receipt.

---

### **PART III.**

#### **NEGOTIATION AND TRANSFER OF RECEIPTS.**

**Section 37.—[NEGOTIATION OF NEGOTIABLE RECEIPTS BY DELIVERY.]** A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

It is not usual for warehouse receipts to be made to bearer but as it seems clear that if a receipt were made in that form it should be negotiable by delivery it seemed wise to make provision for the case. The rule as to restrictive indorsement is also aimed rather to cover a possible contingency than a usual practice.

**Section 38.—[NEGOTIATION OF NEGOTIABLE RECEIPTS BY INDORSEMENT.]** A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

This section applies the law of bills and notes, as it is in fact applied by mercantile custom, to warehouse receipts.

**Section 39.—[TRANSFER OF RECEIPTS.]** A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

The three preceding sections follow the terminology of the Negotiable instruments Law in distinguishing "negotiation" and "transfer." Sec-

tion 39 applies not only to the transfer of non-negotiable receipts, but also to the transfer without a necessary indorsement of negotiable receipts.

**Section 40.—[WHO MAY NEGOTIATE A RECEIPT.]**

**A negotiable receipt may be negotiated—**

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

This section and the next are of fundamental importance to the mercantile community. They state familiar law in regard to bills and notes and there is authority for them in the statutes making warehouse receipts and bills of lading negotiable and in well recognized mercantile custom. It will be noticed that one who takes by trespass or a finder is not included within the description of those who may negotiate.

In the Uniform Bills of Lading Act, Section 31, full negotiability is given to bills of lading. Should it be desired to give the same degree of negotiability to warehouse receipts, the result may be achieved by substituting for Section 40, as here printed, the following: "A negotiable receipt may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the receipt the warehouseman undertakes to deliver the goods to the order of such person, or if at the time of negotiation the receipt is in such form that it may be negotiated by delivery."

**Section 41.—[RIGHTS OF PERSON TO WHOM A RECEIPT HAS BEEN NEGOTIATED.]** A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

This section follows the mercantile theory of making the negotiable receipt represent not simply the title the person negotiating it had, but also whatever property the depositor had, that being what the receipt represented. Many states already have statutes making warehouse receipts negotiable. Mohun, 944: but these statutes have been so brief that they have been variously construed and have to some extent failed of their purpose. See *Shaw v. Railroad Co.* 101 U. S. 557; *Hurt's Case*, 99 Ala. 140; *Bank v. Lee*, 99 Ala. 496.

**Section 42.—[RIGHTS OF PERSON TO WHOM A RECEIPT HAS BEEN TRANSFERRED.]** A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title of the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

So far as a non-negotiable receipt is concerned this states the rights at common law of any purchaser of bailed goods. Therefor the purchaser gets nothing by the warehouse receipt except evidence. In the case of a negotiable receipt the purchaser has the further right given by the next section.

**Section 43.—[TRANSFER OF NEGOTIABLE RECEIPT WITHOUT INDORSEMENT.]** Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

This follows the analogy of bills and notes. Crawford, Negot. Inst. Law, §79.

**Section 44.—[WARRANTIES ON SALE OF RECEIPT.]** A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

- (a) That the receipt is genuine,
- (b) That he has a legal right to negotiate or transfer it,
- (c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and
- (d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

This section except [d] follows the Negotiable Instruments Law. Crawford, §115. [d] it is believed states the existing law.

**Section 45.—[INDORSER NOT A GUARANTOR.]** The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfil their respective obligations.

Mercantile usage in regard to warehouse receipts differs from that in regard to bills and notes in the matter to which this section relates. It states

the existing law even where statutes have made warehouse receipts and bills of lading negotiable. *Shaw v. Railroad Co.* 101 U. S. 557; *Mida v. Geissmann*, 17 Ill. App. 207.

**Section 46.—[NO WARRANTY IMPLIED FROM ACCEPTING PAYMENT OF A DEBT.]** A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

See note to section 37 of the Bills of Lading Act.

**Section 47.—[WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, MISTAKE, OR DURESS.]** The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

This section merely elaborates for the sake of clearness certain cases within the terms of Section 40.

**Section 48.—[SUBSEQUENT NEGOTIATION.]** Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in

good faith, for value and without notice of the previous sale, mortgage or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

This is copied from Section 25 [1] of the English Sale of Goods Act, where it applies to all sales of goods. It is of especial importance in the case of negotiable documents of title.

**Section 49.—[NEGOTIATION DEFEATS VENDOR'S LIEN.]** Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation.

This perhaps goes beyond the existing law. Mechem on Sales, §1507. See, however, *Newhall v. Central Pac. R. R.*, 51 Cal. 345. The protection of dealings in negotiable receipts clearly requires that a vendor, who has by giving up possession of goods or warehouse receipts allowed negotiable receipts to be outstanding, should not be permitted to defeat one who buys such receipts.

---

## PART IV.

### CRIMINAL OFFENSES.

**Section 50.—[ISSUE OF RECEIPT FOR GOODS NOT RECEIVED.]** A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon

conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

To insure the fundamental basis on which the value of negotiable receipts must rest it seemed necessary to punish criminally any misrepresentation or fraud in regard to the existence of the goods behind the receipt. Other obvious frauds are aimed at by the following five sections.

**Section 51.—[ISSUE OF RECEIPT CONTAINING FALSE STATEMENT.]** A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50.

**Section 52.—[ISSUE OF DUPLICATE RECEIPTS NOT SO MARKED.]** A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate" except in the case of a lost or destroyed receipt after proceedings as provided for in Section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

See note to Section 50.

**Section 53.—[ISSUE FOR WAREHOUSEMAN'S GOODS OF RECEIPTS WHICH DO NOT STATE THAT FACT.]** Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or

in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50.

**Section 54.—[DELIVERY OF GOODS WITHOUT OBTAINING NEGOTIABLE RECEIPT.]** A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in Sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50,

**Section 55.—[NEGOTIATION OF RECEIPT FOR MORTGAGED GOODS.]** Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 50.

## PART V.

### INTERPRETATION.

**Section 56.—[CASES NOT PROVIDED FOR IN ACT.]** In any case not provided for in this Act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

A similar provision is commonly inserted when an attempt is made to reduce to statute form a topic of the law, as in the Negotiable Instruments Law, or the Sale of Goods Act.

**Section 57.—[INTERPRETATION SHALL GIVE EFFECT TO PURPOSE OF UNIFORMITY.]** This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

See note to Section 74 of the Uniform Sales Act.

**Section 58.—[DEFINITIONS.]** (1) In this Act, unless the context or subject matter otherwise requires—

“Action” includes counter claim, set-off, and suit in equity.

“Delivery” means voluntary transfer of possession from one person to another.

“Fungible goods” means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

“Goods” means chattels or merchandise in storage, or which has been or is about to be stored.

“Holder” of a receipt means a person who has both actual possession of such receipt and a right of property therein.

**"Order"** means an order by indorsement on the receipt.

**"Owner"** does not include mortgagee or pledgee.

**"Person"** includes a corporation or partnership or two or more persons having a joint or common interest.

To **"purchase"** includes to take as mortgagee or as pledgee.

**"Purchaser"** includes mortgagee and pledgee.

**"Receipt"** means a warehouse receipt.

**"Value"** is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

**"Warehouseman"** means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done **"in good faith"** within the meaning of this Act, when it is in fact done honestly, whether it be done negligently or not.

The only one of these definitions requiring comment is that of value, which follows the Negotiable Instruments Law and applies the rule generally prevailing in regard to bills and notes to warehouse receipts.

**Section 59.—[ACT DOES NOT APPLY TO EXISTING RECEIPTS.]** The provisions of this Act do not apply to receipts made and delivered prior to the taking effect of this Act.

**Section 60.—[INCONSISTENT LEGISLATION REPEALED.]** All Acts or parts of Acts inconsistent with this act are hereby repealed.

**Section 61.—[TIME WHEN THE ACT TAKES EFFECT]** This Act shall take effect on the .....day of....  
....., one thousand nine hundred and

**Section 62.—[NAME OF ACT.]—**[ This Act may be cited as the Uniform Warehouse Receipts Act.

## **PREFACE TO UNIFORM BILLS OF LADING ACT.**

---

In 1905 the Commissioners on Uniform State Laws employed Prof. Samuel Williston, of the Harvard Law School, to prepare an Act to make Uniform the Law of Bills of Lading. The first draft was submitted to the Committee on Commercial Law at St. Paul, Minn., August 23rd, 1906, and received some consideration at its hands. The Commissioners deferred its discussion for a year so that it might be submitted to shippers, bankers and carriers. The Committee on Commercial Law held a meeting at the Bellevue-Stratford Hotel, Philadelphia, Pa., May 13th and 14th, 1907, at which all these interests were represented. As a result of the discussion, a second draft was prepared and considered by the Committee on Commercial Law at Portland, Me., Wednesday, August 21st, 1907, and by the Commissioners at the same place August 22nd, 23rd and 24th. A third tentative draft was distributed June 1st, 1908. The Commissioners at their annual conference held at the New Washington Hotel, Seattle, Wash., August 21st, 22nd and 24th, 1908, recommitted the draft to the Committee on Commercial Law for the purpose of securing additional expert information in perfecting the Act. The Committee on Commercial Law held a meeting at the Waldorf Astoria Hotel, New York City, April 19th and 20th, 1909, at which were present representatives of the American Bankers Association, the American Warehousemen's Association, the National Board of Trade, Merchants Association of New York City, the Chamber of Commerce of Richmond, Va., the National Industrial Traffic League, the National Manufacturers Association, the Erie Railroad, the Pennsylvania Railroad, the New York, New Haven & Hartford Railroad, the Old Dominion Steamship Company, the Bills of Lading Committee of Rail-

roads in Official Territory, the Harvard Law School, the Law Departments of Columbia University and the University of Pennsylvania. In addition written communications were considered from numerous individuals and commercial organizations. A fourth tentative draft was circulated July 17th, 1909 and exhaustively discussed at a meeting of the Committee on Commercial Law at the Hotel Pontchartrain, Detroit, Mich., August 17th and 18th, 1909. At this meeting the following organizations and individuals were represented either in person or by letter: The American Bankers' Association, the National Association of Manufacturers, the American Warehousemen's Association, the National Board of Trade, the National Association of Credit Men, the Michigan Central Railroad, the Pennsylvania Railroad, the New York, New Haven & Hartford Railroad, the Bills of Lading Committee of Railroads in Official Territory, the National Industrial Traffic League, the Chesapeake & Ohio Railroad Company, the Colorado & Southern Railroad Company, Albert Strauss, of J. & W. Seligman & Co. of New York, James Barr Ames, Dean of Harvard Law School, and Samuel Williston, Harvard Law School, Cambridge, Mass.

The Commissioners on Uniform State Laws, at their Nineteenth National Conference, held at the Wayne County Court House, Detroit, Michigan, August 19th, 20th, 21st and 23rd, 1909, carefully considered the same section by section, and duly indorsed the Act and recommended it to the legislatures of the various States for passage.

On September 13th, 1909, a conference on the whole subject of Bills of Lading was held at the Auditorium Hotel, Chicago, Ill., under the auspices of the American Bankers' Association, at which all the diversified commercial interests of the United States were represented as follows:

Charles W. Baker, Secretary The Chicago Live Stock Exchange,  
Union Stock Yards, Chicago, Ill.

F. L. Bateman, Secretary and Treasurer Trans-Continental Freight Company, 215 Dearborn St., Chicago.

Charles J. Bell, Commissioner Sioux City Commercial Club, Sioux City, Iowa.

O. F. Bell, National Industrial Traffic League, Chicago; Traffic Manager Crane Company.

Frank W. Blair, Bills of Lading Committee, Michigan Bankers' Association, Detroit.

Charles P. Blinn, Jr., Vice-President National Union Bank, Boston, Mass.

G. W. Bolton, President Rapides Bank, Alexandria, La.; Chairman Bills of Lading Committee, Louisiana Bankers' Association.

Theodore Brent, Chicago, Rock Island & Pacific Ry., Chicago, Ill.

John F. Bruton, President First National Bank, Wilson, N. C.; Chairman Bills of Lading Committee, North Carolina Bankers' Association.

A. P. Burguin, Assistant Counsel Pennsylvania Lines.

Leslie Butler, President Butler Banking Company, Hood River, Ore.

Edwin Chamberlain, Second Vice-President San Antonio Loan and Trust Co., San Antonio, Tex.

G. A. Charters, General Eastern Manager California Fruit Growers' Exchange of Los Angeles, Chicago, Ill.

E. L. Copeland, Secretary and Treasurer The A. T. & S. F. Ry. Co., Topeka, Kans.; Association American Railway Accounting Officers.

Geo. H. Crosby, Secretary and Treasurer C. R. I. & P. Ry., Chicago; Society of Railway Financial Officers.

Chas. F. Droste, of Droste & Snyder, New York; Chairman Traffic Committee, New York Mercantile Exchange.

W. F. Dudley, Assistant General Auditor C. M. & St. P. Ry., Chicago; Member Standing Treasury Committee, The Association of American Railway Accounting Officers.

- Henry Dunkak, President. New York Mercantile Exchange; of Zimmer & Dunkak.
- Phil. R. Easterday, Assistant Cashier First National Bank, Lincoln, Neb.
- J. M. Elliott, Los Angeles Chamber of Commerce, Los Angeles, Cal.
- Joseph S. Ford, Chairman Treasury Committee, Association of American Railway Accounting Officers, Chicago.
- Thos. F. Gallagher, Chicago Butter and Egg Board, Chicago.
- Albert D. Graham, Vice-President-Cashier Citizens' National Bank, Baltimore, Md.
- Cliff W. Gress, Cashier Citizens' State Bank, Cannon Falls, Minn.; Member Bills of Lading Committee, Minnesota Bankers' Association.
- Edward Pierce Higgins, Auditor Disbursements "Big 4," Cincinnati; Representing Treasury Committee, Association American Railway Accounting Officers.
- W. L. Hinds, President Merchants' Transfer and Storage Co., Des Moines, Iowa. Representing the American Warehousemen's Association.
- W. M. Hopkins, Manager Transportation Department, Board of Trade, Chicago.
- T. S. Howland, Chicago, Burlington & Quincy R.R. Co., Chicago, Society of Railway Financial Officers.
- C. G. Hutcheson, Chairman. Bills of Lading Committee, Missouri Bankers' Association. Cashier First National Bank, Kansas City.
- Geo. W. Hyde, Chairman Bills of Lading Committee, Massachusetts Bankers' Association. Asst. Cashier First National Bank, Boston.
- William Ingle, Vice-President and Cashier Merchants' National Bank, Baltimore, Md. Member Bills of Lading Committee, American Bankers' Association.

- Francis B. James, President Ohio State Board of Uniform State Laws, Chairman Committee on Commercial Law of the Commissioners on Uniform State Laws, and Chairman of the Committee on Commercial Law of the American Bar Association, Cincinnati, Ohio.
- J. Lloyd Jones, President United States Canning Co., Fredonia, N. Y.
- P. C. Kauffman, Chairman Bills of Lading Committee, Washington Bankers' Association. Second Vice-President Fidelity Trust Co., Tacoma, Wash.
- N. B. Kelly, Commissioner of Transportation, Chamber of Commerce, Philadelphia, Pa.
- J. B. Korndorfer, Cashier Peoples National Bank, Brooklyn, N. Y.; Member Bills of Lading Committee, New York State Bankers' Association.
- Wm. A. Law, Vice-President Merchants' National Bank, Philadelphia, Pa.; Member Bills of Lading Committee, Pennsylvania Bankers' Association.
- J. A. Lewis, Cashier National Bank of Commerce, St. Louis, Mo.; Member Bills of Lading Committee, American Bankers' Association; Member Bills of Lading Committee, Missouri Bankers' Association.
- J. C. Lincoln, President National Industrial Traffic League; Commissioner of Merchants' Exchange Traffic Bureau, St. Louis, Mo.
- William Livingstone, President Dime Savings Bank, Detroit, Mich.; Member Bills of Lading Committee, American Bankers' Association.
- Elliott C. McDougal, President Chamber of Commerce, Buffalo, N. Y.; Member Bills of Lading Committee, New York State Bankers' Association.
- E. J. McVann, Manager Traffic Bureau, Commercial Club of Omaha, Neb.; Member Uniform Bills of Lading Committee, National Industrial Traffic League.
- E. F. Madden, President First National Bank, Hays City, Kans.

- Frank E. Marshall, Secretary The Commercial Exchange, Philadelphia, Pa.
- George F. Mead, Boston Fruit & Produce Exchange, Boston, Mass.
- George W. Neville, Chairman Bills of Lading Committee, New York Cotton Exchange.
- A. W. Newell, President Fourth National Bank, Boston, Mass.
- A. R. Paton, Baker-Vawter Company, Chicago, Ill.
- Thomas B. Paton, General Counsel American Bankers' Association, New York.
- Carroll Pierce, Vice-President Citizens' National Bank, Alexandria, Va.; Chairman Bills of Lading Committee, Virginia Bankers' Association.
- Lewis E. Pierson, President Irving National Exchange Bank, N. Y.; President American Bankers' Association; Chairman Bills of Lading Committee, American Bankers' Association.
- Julius S. Pomeroy, Cashier Security National Bank, Minneapolis, Minn.
- F. H. Price, President Herbert Bradley Co., New York; Member Committee Uniform Ocean Bills of Lading Association.
- W. F. Priebe, Chicago, National Poultry, Butter & Egg Asso.
- Mr. Prince, Rock Island Railroad, Chicago.
- Jonathan P. Reeves, Treasurer Chicago & Eastern Illinois R. R. Co. Representing Society of Railway Financial Officers, Bills of Lading Committee, Chicago.
- C. L. Robey, Cashier Purcellville National Bank, Purcellville, Va.
- Henry Russel, Detroit, Mich.; General Counsel Michigan Central Railroad and Counsel to Carriers' Bills of Lading Committee.
- F. W. Sawyer, Cashier Souhegan National Bank, Milford, N. H.; Chairman Bills of Lading Committee, Northern Bankers' Association.
- John C. Scales, Chairman Refrigerator Car Lines Committee, National League of Commission Merchants, Chicago.

Francis B. Sears, Vice-President National Shawmut Bank,  
Boston, Mass.

E. K. Smith, Chairman Bills of Lading Committee, Arkansas  
Bankers' Association, Texarkana, Ark.

Hal. H. Smith, Attorney Michigan Bankers' Association; Mem-  
ber Legislative Committee, National Industrial Traffic  
League.

C. B. Stafford, Commissioner Memphis Grain and Hay Associa-  
tion, Memphis, Tenn.

Irvine B. Unger, Old Detroit National Bank, Detroit, Mich;  
Member Bills of Lading Committee, Michigan Bankers' As-  
sociation.

J. D. Whisenand, Vice-President Central State Bank, Des Moines  
Iowa; Chairman Bills of Lading Committee, Iowa Bankers'  
Association.

W. T. S. White, Member National Association Poultry, Butter  
and Eggs, Chicago.

E. E. Williamson, Receivers' and Shippers' Association, Cincin-  
nati, Ohio.

Samuel Williston, Harvard Law School, Cambridge, Mass.,

As explanatory of the Uniform Bills of Lading Act the fol-  
lowing is taken from the proceedings of this conference.

"The Chairman: Gentlemen, we shall now have the pleasure  
of hearing from Mr. Francis B. James, Chairman of the Com-  
mittee on Commercial Law of the Commissioners on Uniform  
State Laws and President of the Ohio State Board on Uniform  
State Laws, \* \* \* \* who will tell us something about the  
Uniform Bills of Lading Act adopted by the Commission."

Mr. Francis B. James, of Cincinnati, Ohio:

"Mr. Chairman and Gentlemen: The subject announced on  
the program is the 'Uniform Bills of Lading Act of the Com-  
missioners on Uniform State Laws.' It might be well at the

outset to say a word as to who are the 'Commissioners on Uniform State Laws.' In forty-eight States and Territories the governors have, pursuant to law, appointed Commissioners on Uniform State Laws. The activities of these Commissioners are confined strictly to State legislation as distinguished from Federal legislation. These Commissioners meet in National Conference and duly organize with officers. The Conference appoints committees for the consideration of the various subjects which come before it, the Act to make Uniform the Law of Bills of Lading being entrusted to the Committee on Commercial Law. Upon the copies which have been distributed to you marked 'Memorandum'\* you will find the work done and public hearings had in the preparation of the Uniform Bills of Lading Act. The query will present itself, what condition called the Commission into existence? Under the Constitution of the United States a central body (Congress) was organized with limited jurisdiction upon a few commercial subjects, confined to interstate commerce, foreign commerce, admiralty, coinage, bankruptcy, copyrights, patents, post offices and post roads. There are many business transactions, commercial in nature and

---

\*This memorandum was as follows:

"The Commissioners on Uniform State Laws in 1905 employed Prof. Samuel Williston of Harvard Law School to draw "AN ACT TO MAKE UNIFORM THE LAW OF BILLS OF LADING." Five separate drafts have been prepared, the first four tentative. The successive drafts were distributed for criticism and in conjunction with shippers, receivers, bankers and carriers, carefully considered by the Committee on Commercial Law at St. Paul, Minn., August 23, 1906; Philadelphia, Pa., May 13, 1907; Portland, Me., August 31, 1907; New York City, April 20, 1909; and Detroit, Mich., August 18, 1909; and by the Commissioners at Portland, Me., August 22 and 23, 1907, and Detroit, Mich., August 19, 20, 21 and 23 1909. At this last meeting a final draft of the Act was approved and recommitted to the Committee on Commercial Law in conjunction with Professor Williston to make such verbal corrections as would clearly express the intention. Although the Act which follows is final, it is still subject to such verbal changes and should not be introduced into legislatures until the final form is issued duly authenticated."

national in extent, which, however, do not amount to commerce; others amounting to commerce and confined within State lines, yet indirectly affecting national commerce. There being no central body which could deal with these problems, this Commission was created with power to recommend to the various State legislatures the enactment of laws which would become national in scope, although politically limited to each State. It was necessary for the Committee on Commercial Law and the Commission to determine, in the first place, in dealing with the subject of Bills of Lading and formulating a measure, just what was the Law of Bills of Lading. It was first decided that the law of bills of lading was not the law of carriers. The law of carriers defines the relative rights and duties of shipper and carrier, and is fixed by the common law, except as modified by statute. The conditions which you find upon the back of bills of lading do not pertain to the law of bills of lading, but to modifications of the law of carriers as affecting the relations between shipper and carrier. The law of bills of lading, however, properly understood and as dealt with by the Commission, deals with bills of lading as documents of title or as pieces of commercial paper. The Commissioners, therefore, in formulating this uniform act upon bills of lading have dealt with the bill of lading primarily as a document of title or a piece of commercial paper. They have dealt with it only secondly, however, as defining the relations of shipper and carrier in so far as it directly bore upon it as a document of title or a piece of commercial paper. While the law as set forth in this Act does, to that extent, define the relation between shipper and carrier, and while it is secondary in its nature, it is just as important as the primary object of the Act in dealing with the bill of lading as a document of title or piece of commercial paper. Copies of the Act as formulated have been distributed so as to save time in its discussion. It provides that this document of title may be of two kinds—the

'straight' bill of lading and the 'order' bill of lading. Aided by Prof. Williston, the Committee on Commercial Law took up a consideration of the following subjects in formulating this measure. The general principles underlying the law merchant; the actual customs and usages of to-day in respect to bills of lading as pieces of commercial paper; fragmentary state legislation in which efforts had been made to put the law of bills of lading upon a modern and up-to-date footing; judicial decisions which misconstrued and abrogated this legislation; that the order bill of lading was used largely in the movement of staple commodities; the foreign law upon the subject; what had been said on the subject by economic writers; the physical transportation of staple commodities as well as manufactured articles; this form of document of title as a piece of commercial paper in its relation to the whole credit system, the currency and the banking facilities of the country. The conclusions reached by the Committee, while reached before the publication in May, 1909, of Mr. Logan McPherson's book on 'Railroad Freight Rates in Relation to the Industry and Commerce of the United States,' are so much better stated in his book than I would be able to state them, that I will read to you from his book. It states the basic principle of the Act (p. 190):

*"The [order] bill of lading is an instrument for facilitating commerce, the importance of which is not generally known. It is not only a certificate that merchandise is in transit, but a first lien upon that merchandise in a way a title to ownership, and, as fulfilling this function, negotiable. For example, a grain dealer buying a carload of wheat at the Western field may, and in the vast majority of cases does, deposit the bill of lading covering that car in a bank as security for a loan to its value. If that car goes through to a port where it is sold for export the loan may not be paid and the bill of lading lifted until the grain is transferred from the car to the vessel. There is a similar procedure*

in the case of other commodities, with bills of lading covering raw material to the factory and finished product from the factory. *The [order] bill of lading thus contributes to that fluidity of the circulating medium, that celerity in the transfer of merchandise, which are striking achievements and essential requirements of current civilization.'*

"Now a few words in an analysis of the Act itself. First, the Act contains certain fundamental provisions. The essence of the Act, however, may be said to center about section 31, which reads:

" 'A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.'

"In other words, Section 31 places the order bill of lading upon the precise basis of negotiability as a promissory note, check, draft or bill of exchange. In other sections also, which it is unnecessary to read, negotiability is clearly pointed out.

"There are other provisions which are necessary corollaries which follow from Section 31. For example, Section 24 provides that in case an order bill of lading is issued there shall be no attachment upon the goods. To illustrate: A shipper takes to the depot and loads upon the cars of the Michigan Central Railway certain commodities for which the railway issues an order bill of lading: The goods start on their way to New York. A creditor of the shipper in Ohio attaches the goods in Ohio as they pass through that State. Subsequently the bill of lading is negotiated in New York City for value to a *bona fide* holder. The question would naturally arise as to who shall have priority. This section solves the problem in favor of the innocent purchaser for value. Another provision is as to liens. Section 26

provides that there shall be no lien claimed except for freight charges, storage, demurrage and terminal charges and the necessary preservation of the goods, unless the same is indorsed upon the bill itself. While it frees the goods from attachments and other liens, at the same time it recognizes the vested right that persons may have in the property. By Section 43 the vested rights of those who have property rights in the goods as against an innocent purchaser for value are properly preserved. Likewise the right of stoppage in transitu is cut off as against an innocent purchaser for value of a duly indorsed order bill of lading.

"The question of mistake is dealt with. Possible mistakes are thus treated. Section 8 provides that a non-negotiable bill shall have plainly placed upon its face by the carrier issuing it the words 'Not Negotiable' or 'Non-Negotiable.'

"The subject of accident is thus dealt with. Section 17 relates to lost or destroyed bills, and provides that a court of competent jurisdiction may order the delivery of goods, upon satisfactory proof of loss of the bill and the giving of a bond to protect any person injured by such delivery.

"Frauds are thus guarded. Section 18 provides that a bill, on the face of which the word 'Duplicate' or some other word indicating that the document is not an original is plainly placed, shall impose upon the carrier the liability of warranty that the bill is an accurate copy of the original.

"Section 16 provides that in the case of any alteration or erasure in a bill after its issue, without authority from the carrier issuing it, the bill may be enforced according to its original provisions.

"The misuse of spent bills is carefully guarded. Section 14 provides that if a carrier delivers the goods for which a bill has been issued the negotiation of which would transfer the right to the possession of the goods and fails to cancel the bill the carrier

shall be liable to any one who in good faith purchases the same. The Carrier must secure a surrender and cancellation of the bill. Section 15 likewise provides that in case of a delivery order the fact of delivery shall be marked upon such bill.

"The Act also deals with the important subject of fraudulent bills. For instance, the agent of a railroad company vested with full power to issue order bills of lading signs for goods that were not delivered. One of the inferior English courts in the early part of the last century held that the agency did not begin until the transportation began, and the transportation did not begin until the goods were in the actual possession of the carrier. The merchants could not wait for a decision of the House of Lords (which is the court of last resort in England) and proceeded to Parliament and had a statute enacted. The Supreme Court of the United States erroneously followed the English decision. The ruling of the Supreme Court has been blindly followed by the courts of some of the States, but the courts in many of the States, which have carefully re-examined the cases, have reached the sound diametrically opposite conclusion. In framing this Act the Commission had to choose between the Supreme Court of the United States with its badly reasoned decision and the State courts with their well-reasoned decisions, and the Commissioners reached the conclusion that is embodied in section 23, which provides that if a bill of lading has been issued by a carrier or on its behalf by an agent or employe, the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be bound.

"These provisions and the definition of value in Section 53 are corollaries to the main proposition of negotiability and give emphasis to the nature and character of the paper, recognizing it as part of our currency. An order bill of lading is recognized as part of the currency of commerce, a piece of commercial paper, passing freely from hand to hand, so that a man may discharge

his debt with a bill of lading as well as with cash, either in his relations to his banker or any other creditor. This is peculiarly apparent when we realize the fact that in a great bulk of cases—especially in moving the great staple commodities—an order bill of lading is usually accompanied by a draft, the bill of lading giving the unit of quantity, the draft the unit of value—one being the necessary complement of the other.

“Mr. Prendergast, in his book on ‘Credit and its Uses,’ classifies promissory notes, drafts, checks, bills of lading and warehouse receipts as credit instruments which can be used as mediums of exchange and substitutes for money.

“The great purpose of the Act is to secure a uniform law; not only that the law should be uniform, but that it should rest upon sound principles and the actual commercial practices of to-day. It recognizes the rule laid down by the Supreme Court of the United States in 1842, that the law merchant should be universal and its interpretation uniform. The law merchant knows no country—it is international, and its principle should harmonize with commercial practices all over the world. As the jurisdiction of each State and even of the United States is not world wide, yet a business transaction in any spot has an indirect influence upon national and international commerce. The principle of the necessity for uniformity is thus recognized in Section 52, which reads:

“‘This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.’

“What has already been done? Is uniformity a dream, that our great national business can be regulated by State legislation? Is it an idle dream of those who have been appointed Commissioners by the Governors of forty-eight States? Or is it a matter that can be made a subject of practical demonstration? History shows that it is not an experiment. The Commissioners

on Uniform State Laws in 1896 drafted a Uniform Negotiable Instrument Act, which has since been enacted in thirty-eight States and Territories. So there has been State legislation bringing about national rules of business in thirty-eight States. The Commissioners also drafted a Uniform Warehouse Receipts Act, which, while only recommended in 1906, has already become a law in eighteen States. The Uniform Sales Act, recommended by the Commissioners at the same time, has been enacted in six States.

"Experience has thus demonstrated that it is possible, although we are acting through separate political units, to have commercial laws which are national in scope and effect.

"A word in conclusion. Strong arguments have been made by able lawyers in this country and in England against the general codification of the law on the ground that it prevents its growth—prevents the growth of new customs and new usages. The argument is a sound one if codification were carried out to the logical consequence of those who have been radical advocates of general codification. But topical codification, that is, codification of those branches of the law where certainty is of more importance than the abstract justice of the rule, is essential and desirable. This Act to make uniform the law of bills of lading codifies the customs and usages of commerce, but it contains a clause which permits the growth into law of new usages and customs, as follows (Sec. 51):

"'In any case not provided for in this Act, the rules of law and equity *including the law merchant* \* \* \* shall govern.'

"This Act does not attempt to prevent the growth of new usages and customs of commerce, but encourages it.

"How should codification be brought about? It should only be brought about by co-operation and public criticism. The Committee on Commercial Law in 1902 adopted the policy of publicity and determined that no act should be drafted one

year and enacted the next, but that it should receive years of discussion and public criticism and endeavors made to reconcile every commercial interest affected. The Committee has held numbers of meetings at which numerous and varied commercial interests were represented. It can be safely said that all interests have been reconciled, and that this Act in its final form has received the approval not only of bankers, but of receivers, shippers and carriers. There may be some who desire a more radical act, but, it is believed that this Act represents the conservative thought of the country."

The conference unanimously indorsed the Uniform Bills of Lading Act.

The National Industrial Traffic League, at its annual Convention held in the City of Chicago November 11, 1909, unanimously indorsed the Uniform Bills of Lading Act. Similar action was taken by the Ohio State Board of Commerce at its annual meeting held in the City of Columbus, Ohio, November 12th, 1909.

FRANCIS B. JAMES, Chairman.

CHARLES F. LIBBY.

TALCOTT H. RUSSELL.

W. O. HART.

CHARLES THADDEUS TERRY.

GEORGE WHITELOCK.

JAMES BARR AMES.

Committee on Commercial Law.

Cincinnati, Ohio, Jan. 1st, 1910.

# **AN ACT TO MAKE UNIFORM THE LAW OF BILLS OF LADING.**

**Be it enacted, etc., as follows:**

## **PART I**

### **THE ISSUE OF BILLS OF LADING.**

**Section 1.—[BILLS GOVERNED BY THIS ACT.]** Bills of Lading issued by any common carrier shall be governed by this Act.

**Section 2.—[FORM OF BILLS. ESSENTIAL TERMS.]** Every bill must embody within its written or printed terms—

- (a) The date of its issue,
- (b) The name of the person from whom the goods have been received,
- (c) The place where the goods have been received,
- (d) The place to which the goods are to be transported,
- (e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,
- (f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in Section 23, and
- (g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section.

The provisions of this section are in accordance with business usage. The requirement of printing the words "order of" before the consignee's name is especially desirable in order to prevent the alteration of straight bills into negotiable bills. The only other provision of the section on which comment has been made is (f). The second clause in (f) has been added in this draft to meet objections made by representatives of the carriers.

Though it is desirable that all bills of lading shall conform to the rules here laid down, the essential point is that negotiable bills shall do so, and as to them only is a sanction imposed for failing to insert the terms required by the bill.

**Section 3.—[FORM OF BILLS. WHAT TERMS MAY BE INSERTED.]** A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to law or public policy, or

(b) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Much litigation has arisen over the point involved in 3 (b). The provision as drawn is in accordance with the weight of authority (6 Cyc. of Law 393) and is similar to the corresponding section of the Warehouse Receipts Act.

**Section 4.—[DEFINITION OF NON-NEGOTIABLE OR STRAIGHT BILL.]** A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill.

See note to the following section.

**Section 5.—[DEFINITION OF NEGOTIABLE OR ORDER BILL.]** A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that it is non-negotiable shall not affect its negotiability within the meaning of this act.

This Act makes a fundamental distinction throughout, between negotiable and non-negotiable bills. The former are the negotiable representatives of the goods, the latter merely evidence of the contract between the shipper and carrier. This distinction is clearly recognized in mercantile usage and by much legislation. To some extent it is also recognized by the courts independently of legislation. Negotiable bills are frequently called "order" bills.

**Section 6.—[NEGOTIABLE BILLS MUST NOT BE ISSUED IN SETS.]** Negotiable bills issued in this State for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets.

If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

The issue of bills of lading in parts has often been condemned. It is a direct invitation to fraud in the case of negotiable bills, for one part is as much an original as another. Moreover, it is impossible to guard against the fraud, for it has been held that one who has contracted to buy goods and pay the price on transfer of the bill of lading must pay on having one of a set tendered him. He can not demand all (*Sanders v. McLean*, 11 Q. B. D. 327), though by so doing alone can he be protected, for the carrier may deliver without liability to the holder who first presents a part. *Glynn v. Dock Co.*, 7 App. Cas. 591.

Owing to the fixed practice of international carriers in regard to this matter, it has been thought more conservative to confine the requirements of this section to carriage within the United States.

**Section 7.—[DUPLICATE NEGOTIABLE BILLS MUST BE SO MARKED.]** When more than one negotiable bill is issued in this State for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any one who has purchased the bill for value in good faith as an orig-

inal, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill.

The use of duplicate bills is common, and it is obvious that they should be so marked to avoid fraud or mistake. See *Midland Bank v. Mo. Pac. Ry.*, 132 Mo. 492.

**Section 8.—[NON-NEGOTIABLE BILLS SHALL BE SO MARKED.]** A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it “non-negotiable” or “not negotiable.”

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

By the statutes of several States the carrier must require the surrender of all bills except those marked “not negotiable.”

It seems desirable that a bill of lading should indicate very clearly on its face whether it is a negotiable or non-negotiable bill, in view of the marked differences in the legal effect of the two documents. Section 50 provides a criminal penalty for failure to observe this requirement.

**Section 9.—[INSERTION OF NAME OF PERSON TO BE NOTIFIED.]** The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

This section is adopted with slight changes in wording from House Bill 15,846 of the 1st session of the 59th Congress. The practice is common for a shipper of goods to take a bill to his own order that he may obtain the discount of a draft for the price, inserting also in the bill a request that the carrier notify the prospective buyer of the arrival of the goods, so that the latter may promptly pay the price, get the bill of lading, and remove the goods. Banks sometimes fear to discount a draft for the consignor when such a provision is inserted, questioning whether the prospective purchaser of the goods may not have a better right than one who buys the bill of lading either outright or as security.

As the person to be notified may not have even a contract right against the consignor, it seems best to remove any doubt as to the rights of one who purchases or lends money on such a bill.

**Section 10.—[ACCEPTANCE OF BILL INDICATES ASSENT TO ITS TERMS.]** Except as otherwise provided in this act,

where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy.

This section deals with a question upon which there has been much litigation, and expresses the weight of authority, though there are many contrary decisions.

---

## PART II

### OBLIGATIONS AND RIGHTS OF CARRIERS UPON THEIR BILLS OF LADING.

Section 11.—[OBLIGATION OF CARRIER TO DELIVER.]  
A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods,

(b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is negotiable, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

See the definition of holder in Section 53. The requirement of signature to an acknowledgment that the goods have been delivered is perhaps not the law aside from statute, but, as the usage is reasonable, it is adopted.

**Section 12.—[JUSTIFICATION OF CARRIER IN DELIVERING.]** A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a non-negotiable bill for the goods, or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee.

This section gives the carrier a justification in some cases where he would not, under the preceding section, be bound to deliver, *e. g.*, if a thief presented a negotiable bill properly indorsed, the carrier would be protected if he delivered the goods innocently.

**Section 13.—[CARRIER'S LIABILITY FOR MISDELIVERY.]** Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

This enacts the well-recognized law in regard to misdelivery generally, and also provides for the case where, owing to notice of the rights of others a delivery of the goods to the consignee is wrongful. It is probable that the existing law warrants the whole section.

See *Southern Express Co. v. Dickson*, 94 U. S., 549; 6 Cyc., 468, *et seq.*

**Section 14.—[NEGOTIABLE BILLS MUST BE CANCELLED WHEN GOODS DELIVERED.]** Except as provided in Section 27, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto.

It is an obvious requirement of the mercantile use of negotiable bills of lading that the goods shall remain in the hands of the carrier as long as the bill is outstanding, and statutes similar in effect to this section are in force in some States. See also, as to warehousemen, *Mohun*, 2, 24, 355, 382, 538, 593.

The section does not apply to non-negotiable bills, because usage and mercantile necessity frequently require delivery in such cases without surrender of the receipt. See *Forbes v. Boston & Lowell R. R.*, 133 Mass., 154; *Litchfield Bank v. Elliott*, 83 Minn., 469.

It is necessary to except compulsion by legal process, not only because in one case such compulsion is contemplated by this Act, See Section 43, but also because the compulsion may occur in a state which has not passed the Act.

**Section 15.—[NEGOTIABLE BILLS MUST BE CANCELLED OR MARKED WHEN PARTS OF GOODS DELIVERED.]** Except as provided in Section 27, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in

general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

This follows in regard to partial deliveries the rule of Section 14.

**Section 16.—[ALTERED BILLS.]** Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void. whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

Alteration of a document transferring title to property, or indicating ownership, can not destroy the vested title to the property. Wald's Pollock (3d ed.), p. 845, and cases cited. Accordingly, even though a bill is altered, the goods in the carrier's possession belong to the same person they did before alteration, and though it would be possible to hold that the carrier's only relation to the goods became that of a bailee, bound only to turn over the goods on demand, but not bound to fulfill the contract of carriage, this seems an inconvenient result. No hardship is imposed upon the carrier if he is required to fulfill his obligation to carry the goods to their destination on the terms originally agreed upon.

This section is taken in substance from a condition in the uniform bill of lading assented to by most carriers.

**Section 17.—[LOST OR DESTROYED BILLS.]** Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

As in the case of all lost instruments (whether negotiable bills and notes or not) accidental destruction should not relieve the maker or diminish the rights of the holder. Accordingly the holder of a bill should be allowed to compel the delivery of the goods without surrender of the bill. This relief, however, can be given only under equitable conditions. The carrier can not be required to increase its risk because of the holder's carelessness or accident. Accordingly, a sufficient bond is required. The carrier will still remain liable on the original bill of lading if it should turn up in the hands of a *bona fide* purchaser, under Section 14, but will be able to recoup his liability against the bondsmen. As this draft imposes no penalty upon the carrier for failure to take up a negotiable bill of lading on delivery of the goods, other than making the carrier liable on such a bill which it has not taken up, there is nothing to prevent the carrier from making such arrangement as it deems satisfactory with the holder of a lost or destroyed bill, without requiring the legal proceeding provided for in this section.

**Section 18.—[EFFECT OF DUPLICATE BILLS.]** A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

Duplicate bills of lading seem to have been somewhat confused by some courts, and perhaps by some business men, with bills of lading issued in sets, in which each part is an original. Banks appear sometimes to lend money on duplicate bills, and in *First Bank of Batavia v. Ege*, 109 N. Y., 120, at least the court seemed to treat the duplicate as if it were as good as the original. In *Shaw v. United States*, 101 U. S., 557, the duplicate was treated as of no more value than a copy. See also *Midland Bank v. Mo. Pac. Ry. Co.*, 132 Mo., 492.

It is obvious that two separate bills representing the goods can not be permitted. The duplicate, therefore, must not represent the goods. It should, however, be conclusive upon the carrier that there is an original of the same tenor.

**Section 19.—[CARRIER CAN NOT SET UP TITLE IN HIMSELF.]** No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

This states the common law as to bailees generally. 3 Am. & Eng. Encyc. of Law, 759.

**Section 20.—[INTERPLEADER OF ADVERSE CLAIMANTS.]** If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defence to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate.

The case of *Crawshay v. Thornton*, 2 Myl. & C. 1, unfortunately held that interpleader was not a proper remedy in such a case. It is, however, the only adequate remedy, and is probably generally allowed in this country. 3 Am. & Eng. Encyc. of Law, 762.

**Section 21.—[CARRIER HAS REASONABLE TIME TO DETERMINE VALIDITY OF CLAIMS.]** If some one other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

It seems obviously proper that the carrier should be protected for such brief period as may be necessary to enable him to determine the rights of the claimants.

**Section 22.—[ADVERSE TITLE IS NO DEFENCE, EXCEPT AS ABOVE PROVIDED.]** Except as provided in the two preced-

ing sections and in Section 12, no right or title of a third person unless enforced by legal process shall be a defence to an action brought by the consignee of a non-negotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand.

Except as qualified by the preceding sections, the common law doctrine is here stated that a bailee can not set up the title of a third person as an excuse for failure to deliver goods. See 3 Am. & Eng. Encyc. of Law, 758.

**Section 23.—[LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION OF GOODS.]** If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to

- (a) The consignee named in a non-negotiable bill, or
- (b) The holder of a negotiable bill,

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words

“shipper’s load and count” or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the non-receipt or by the misdescription of the goods described in the bill.

This section, perhaps imposes on the carrier a stricter rule than that generally in force in this country in that it makes a carrier liable for an innocent misdescription of the goods. See *Hale v. Milwaukee Dock Co.*, 23 Wis., 276; but as the carrier can readily protect himself by inserting in the bill only what he knows, namely, the marks on the packages or the statements of the shipper regarding them, it seems best to make the carrier responsible for what he asserts. The section also charges the carrier for the improper conduct of an employee in issuing a bill when goods have not been received. The weight of authority apart from statute has freed the carrier from liability on the ground that the employee had no authority to issue a bill under these circumstances. But much fault has justly been found with this rule and in some states it has been changed by statute.

**Section 24.—[ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE BILL HAS BEEN ISSUED.]** If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they can not thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

If the mercantile theory of documents of title, such as bills of lading and warehouse receipts, were carried to its logical extent, no attachment of the goods represented by the document or levy upon them could be permitted while the negotiable document was outstanding. For the mercantile theory proceeds upon the assumption that a negotiable document of title represents the goods and may be safely dealt with on that assumption. For one and the same reason the law cannot permit the bailee to deliver the goods without taking up an outstanding negotiable receipt for them, or allow attachment or levy upon the goods, when they are represented by

outstanding negotiable documents. For a similar reason the maker of negotiable notes is protected from garnishment; in most states by absolutely disallowing such garnishment and in other states by making any garnishment subject to the rights of even a subsequent purchaser for value before maturity of the paper. Likewise by statute in some states an attachment of stock is postponed to a subsequent purchaser of the stock certificate. *Clews v. Friedman*, 180 Mass., 556. So in the case of carriers, some protection against garnishment has been given. In most states, if the goods are actually in transit the carrier can not be garnished, 14 Am. & Eng. Encyc. of Law, 810. A transfer of the bill of lading prevails over a subsequent attachment. *Mather v. Gordon*, 59 At. Rep., 424 (Conn); *Robert C. White Co. v. Chicago & C. R. Co.*, 87 Mo. App., 330; *Union Bank v. Rowan*, 23 S. C., 339; and in *Peters v. Elliott*, 78 Ill., 321, it was held, that an attaching creditor of a consignor was postponed to one who bought the bill of lading subsequently.

It was thought best in this Act not to take the extreme position that no attachment, garnishment or levy could be made on property for which a negotiable bill was outstanding, but to cover the essential practical point by making it a condition of the validity of such seizure that the negotiation of the bill be enjoined or the document impounded. The following section expressly gives the court full power to aid, by injunction and otherwise, a creditor seeking to get at a negotiable bill and the property covered thereby.

**Section 25.—[CREDITOR'S REMEDIES TO REACH NEGOTIABLE BILLS.]** A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process.

As the right of legal garnishment of bailed property is limited by Section 24, the creditor is given by this section such rights as are included under the head of bills of equitable attachment or in aid of execution.

**Section 26.—[NEGOTIABLE BILL MUST STATE CHARGES FOR WHICH LIEN IS CLAIMED.]** If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the

date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

This section is obviously requisite for the credit of negotiable bills, and is part of the general plan to make such bills indicate as clearly as possible on their face for what they stand.

**Section 27.—[EFFECT OF SALE.]** After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable.

This section necessarily qualifies the right of a purchaser to a negotiable bill; such a purchaser may ordinarily assume that if the document was issued to the owner of goods and has been legally transferred to the purchaser, the latter will get a good title, but this assumption must be qualified by the chance referred to in this section. The age of the bill will, however, ordinarily give warning.

---

## PART III

### NEGOTIATION AND TRANSFER OF BILLS.

**Section 28.—[NEGOTIATION OF NEGOTIABLE BILLS BY DELIVERY.]** A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

This section should be read in connection with the following four sections. Thus, Section, 29, provides as to the method of negotiating order bills. Section 31 provides as to what persons may make effective negotiation, and Section 32 provides what rights are acquired by a purchaser if such a person, as is described in Section 31, negotiates the bill in the manner permitted by Sections 28 and 29. In allowing negotiation by delivery of a bill indorsed in blank, the draft follows the rule in regard to bills and notes, which is that also applied by mercantile usage to bills of lading.

**Section 29.—[NEGOTIATION OF NEGOTIABLE BILLS BY INDORSEMENT.]** A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

As the preceding section adopted the rule of bills and notes as to negotiation by delivery, so this section similarly adopts a rule in regard to negotiation by indorsement.

**Section 30.—[TRANSFER OF BILLS.]** A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A non-negotiable bill can not be negotiated, and the indorsement of such a bill gives the transferee no additional right.

As provision is made in several sections for the negotiation of bills, so it is also provided what the effect is of the transfer of bills, including the transfer of non-negotiable bills and of negotiable bills without complying with such formalities as are necessary to make an effective negotiation of them. There is no section providing as to who may transfer a bill, corresponding to Section 31 as to who may negotiate a bill, since under Section 33, where a bill is transferred, but not negotiated, the transferee can in no case acquire a greater right than the transferor had. Whoever, therefore, transfers a bill, can give such a right and no more.

**Section 31.—[WHO MAY NEGOTIATE A BILL.]** A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

This section and the following are of fundamental importance to the mercantile community. They state familiar law in regard to bills and notes, and there is authority for applying the same rules to bills of lading, both in the statutes making bills of lading negotiable and in decisions of

courts recognizing mercantile custom. *Commercial Bank v. Armsby Co.*, 120 Ga., 74; *Pollard v. Reardon*, 65 Fed., 848 (C. C. A.); *Munroe v. Philadelphia Warehouse Co.*, 75 Fed., 545. *Tiedeman vs. Knox* 53 Md. 612; *Hardie vs. R. R. Co.* 118 La. 254; *Scheuerman vs. Monarch Fruit Co.* (March 1, 1909),—La.—S. C. 48 Southern Rep. 647. For German Law see *Handelsgesetzbuch* secs. 363, 426, 442, 446-448. This section is also in harmony with the views expressed by the American Bar Association. See Vol. 33, Reports American Bar Association pp. 24, 25 and 506, 507.

**Section 32.—[RIGHTS OF PERSON TO WHOM A BILL HAS BEEN NEGOTIATED.]** A person to whom a negotiable bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

Even more than the preceding section, this section raises sharply the issue between what may be called the mercantile theory of bills of lading and the common law theory. The common law theory may be stated in these words: The bill of lading is a symbol of the property. Delivery of the bill of lading has the same effect as delivery of the property, but as property may be delivered without transferring title and without estopping the owner from asserting his title against one who has bought in good faith from the possessor, so in case of a bill of lading the original owner of the goods may always show what the real nature of the transaction was, even against a *bona fide* purchaser. Merchants and bankers, on the other hand, regard the bill of lading as a representation of title as well as a symbol of possession. See the decisions cited in the note to the preceding section as to the mercantile theory, and compare recent expressions in *The Carlos F. Roses*, 177 U. S., 655, 665; *Washburn-Crosby Co. v. Boston & Albany R. R. Co.*, 180 Mass., 252, 257.

This Act adopts the mercantile theory in providing that the person to whom the bill has been duly negotiated, acquires not only the title of the person who negotiated the bill, but also such title as the consignor and consignee had. That is, the purchaser may regard the form of the bill as a representation on the part of the consignor that the consignee was the owner of the goods.

Subsection (b) provides that the person to whom the bill is negotiated shall succeed to the contract rights under the bill of lading as well as the property rights.

**Section 33.—[RIGHTS OF PERSON TO WHOM A BILL HAS BEEN TRANSFERRED.]** A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is non-negotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a non-negotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods.

So far as the non-negotiable bill is concerned, this section states the rights at common law of a purchaser of bailed goods. The purchaser, therefore, acquires nothing by the bill of lading except evidence. In case of a negotiable bill, the purchaser has the further right given by the next section.

**Section 34.—[TRANSFER OF NEGOTIABLE BILL WITHOUT INDORSEMENT.]** Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferor is essen-

tial for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

This follows the analogy of bills and notes. Crawford's Negotiable Instrument Law, Section 79.

**Section 35.—[WARRANTIES ON SALE OF BILL.]** A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants—

- (a) That the bill is genuine,
- (b) That he has a legal right to transfer it,
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill, and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim.

The clause in the first paragraph beginning "including" was inserted to avoid any possible misapprehension as to the scope of Section 37.

This section except (d) follows the Negotiable Instrument Law, Crawford, § 115. (d) it is believed states the existing law.

**Section 36.—[INDORSER NOT A GUARANTOR.]** The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

Mercantile usage in regard to warehouse receipts and bills of lading differs from that in regard to bills and notes in the matter to which this section relates. It states the existing law even where statutes have made warehouse receipts and bills of lading negotiable. *Shaw v. Railroad Co.*, 101 U. S., 557; *Mida v. Geissmann*, 17 Ill. App., 207.

**Section 37.—[NO WARRANTY IMPLIED FROM ACCEPTING PAYMENT OF A DEBT.]** A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described.

There are several English decisions to the effect that the holder of a bill of exchange having a forged bill of lading as security is not liable to refund payment of the draft if he receives payment from the drawee. To the same effect are *Hoffman v. Bank*, 12 Wall., 181; *Goetz v. Bank*, 119 U. S., 551, and see *Daniel on Neg. Inst.* § § 174, 175.

In *Landa v. Lattin*, 19 Tex. Civ. App., 246, however, without referring to these authorities, the court went to the extreme length of holding that the holder of a bill of lading taken for security on the discount of a draft succeeded to all the liabilities of his transferor, the seller of the goods, and was to be regarded as warranting the quality of the goods to the same extent as the seller. This decision, though opposed to both authority and reason, was soon followed in *Finch v. Gregg*, 126 N. C., 176, and *Searles v. Smith Co.* 80 Miss., 688. Contrary decisions however, have been rendered in *Tolerton-Stetson Co. v. Anglo-California Bank*, 112 Ia., 706, *Hall v. Keller*, 64 Kans. 211; *German-American Bank v. Craig*, 70 Neb. 41; *Leonhardt v. Small*, 117 Tenn. 153 and more recently *Landa v. Lattin* has been overruled in its own State. *Blaisdell Co. v. Citizens Nat. Bank*, 96 Tex., 626; and *Finch v. Gregg*, supra, has also been overruled *Mason v. Nelson Cotton Co.* 148 N. C. 492. Nevertheless the earlier Texas doctrine has been followed subsequently in Alabama. *Haas v. Citizens' Nat. Bank*, 144 Ala., 562.

**Section 38.—[WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, ACCIDENT, MISTAKE, DURESS OR CONVERSION.]** The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion.

This section merely elaborates for the sake of clearness certain cases within the terms of Section 31.

**Section 39.—[SUBSEQUENT NEGOTIATION.]** Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

This is copied from Section 25 (1) of the English Sale of Goods Act, where it applies to all sales of goods. It is of special importance in the case of negotiable documents of title.

**Section 40.—[FORM OF THE BILL AS INDICATING RIGHTS OF BUYER AND SELLER.]** Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained

by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is endorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

It has for centuries been recognized that the form of the bill of lading was evidence of intent on the part of the seller to transfer or retain title. If the seller names himself not only as consignor, but also as consignee of the goods, the carrier is bailee for him and is his agent, in holding possession. It is also a fair presumption that title remains in the seller, as he is entitled to possession. On the other hand, if the seller names the buyer as consignee, the contract of the carrier is to deliver to the buyer; the carrier's possession is, therefore, for the buyer and with the right to possession presumably title also goes. The rules stated in this section are believed to be in accordance with at least the presumptions recognized by existing law. The difficulty with the law as it now exists is, many courts seem disposed to say that an intention contrary to that which the form of the bill indicates, may be shown even as against third persons. See Sales Act, sec. 20.

**Section 41.—[DEMAND, PRESENTATION OR SIGHT DRAFT MUST BE PAID, BUT DRAFT ON MORE THAN THREE DAYS TIME MERELY ACCEPTED BEFORE BUYER IS ENTITLED TO THE ACCOMPANYING BILL.]** Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order.

This section covers a question that has caused some litigation, (See Williston on Sales, Section 290); and is probably warranted by existing law.

Drafts on demand, presentation or sight, are assimilated by section 7 of the Uniform Negotiable Instruments Act. See Brannan Negotiable Instruments (1908) pp. 4 and 43.

#### **Section 42.—[NEGOTIATION DEFEATS VENDOR'S LIEN.]**

Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

This section is covered by the Uniform Sales Act Sections 59 (2) and 62. It was decided in *Newhall v. Central Pacific R. R.*, 51 Cal., 345, that a railroad redelivering goods to the seller on receiving notice of stoppage in transitu was liable to a purchaser of a bill of lading issued for the goods, though the purchase was subsequent to the notice to stop. The case has been somewhat criticised by text-writers, but there are no decisions against it, and it seems clearly better to protect the innocent purchaser of

the bill than the seller who has voluntarily taken part in the issue of the bill. If the purchaser of the bill is to be protected, the carrier must necessarily be allowed to protect himself by refusing to deliver the goods until the bill of lading is surrendered.

**Section 43.—[WHEN RIGHTS AND REMEDIES UNDER MORTGAGES AND LIENS ARE NOT LIMITED.]** Except as provided in Section 42, nothing in this Act shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this Act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

This section is declaratory and is intended to make perfectly clear that neither Section 24 nor any other section is intended to be subversive of established laws governing chattel mortgages and liens on goods prior to the time of their delivery to the carrier; in so far at least as such mortgages and liens are good not simply between the parties, but against third parties.

---

## **PART IV.**

### **CRIMINAL OFFENCES.**

**Section 44.—[ISSUE OF BILL FOR GOODS NOT RECEIVED.]** Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offence by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

To insure the fundamental basis on which the value of negotiable bills of lading must rest, it is necessary to punish criminally misrepresentation or fraud in regard to the existence of the goods behind the bill of lading. Other obvious frauds are aimed at by six following sections.

**Section 45.—[ISSUE OF BILL CONTAINING FALSE STATEMENT.]** Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 44.

**Section 46.—[ISSUE OF DUPLICATE BILLS NOT SO MARKED.]** Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of Section 7, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

See note to Section 44.

**Section 47.—[NEGOTIATION OF BILL FOR MORTGAGED GOODS.]** Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

See note to Section 44.

**Section 48.—[NEGOTIATION OF BILL WHEN GOODS ARE NOT IN CARRIER'S POSSESSION.]** Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear

to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

See note to Section 44.

**Section 49.—[INDUCING CARRIER TO ISSUE BILL WHEN GOODS HAVE NOT BEEN RECEIVED.]** Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carriers control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

See note to Section 44.

**Section 50.—[ISSUE OF NON-NEGOTIABLE BILL NOT SO MARKED.]** Any person who with intent to defraud issues or aids in issuing a non-negotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both.

See note to Section 44.

---

## **PART V.**

### **INTERPRETATION.**

**Section 51.—[RULE FOR CASES NOT PROVIDED FOR IN THIS ACT.]** In any case not provided for in this Act, the rules of

law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern.

A similar provision is commonly inserted when an attempt is made to reduce to statutory form any topic of the law as in the Negotiable Instrument Law, the Sales Act and Warehouse Receipts Act.

**Section 52.—[INTERPRETATION SHALL GIVE EFFECT TO PURPOSE OF UNIFORMITY.]** This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

This section is taken from the Sales Act and Warehouse Receipts Act, in order to induce the courts to consider not primarily the law previously existing in one State, but that existing in the States generally, in construing the present bill.

Although the Negotiable Instruments Act does not contain this section yet the courts of last resort have rightly applied this rule. See Brannan on Negotiable Instruments Law (1908) page 1, note 2, and cases there cited and Crawford, Neg. I. L. (3rd. ed. 1908) p. 3.

**Section 53.—[DEFINITIONS.]** (1) In this Act, unless the context or subject matter otherwise requires—

“Action” includes counter claim, set-off, and suit in equity.

“Bill” means bill of lading.

“Consignee” means the person named in the bill as the person to whom delivery of the goods is to be made.

“Consignor” means the person named in the bill as the person from whom the goods have been received for shipment.

“Goods” means merchandise or chattels in course of transportation, or which have been or are about to be transported.

“Holder” of a bill means a person who has both actual possession of such bill and a right of property therein.

“Order” means an order by indorsement on the bill.

“Owner” does not include mortgagee or pledgee.

**“Person”** includes a corporation or partnership or two or more persons having a joint or common interest.

To **“purchase”** includes to take as mortgagee and to take as pledgee.

**“Purchaser”** includes mortgagee and pledgee.

**“Value”** is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

(2) A thing is done **“in good faith,”** within the meaning of this Act, when it is in fact done honestly, whether it be done negligently or not.

The only definitions in this section requiring comment are the last two. The definition of value follows the Uniform Negotiable Instruments Act, the Uniform Sales Act, the Uniform Warehouse Receipts Act, and the Uniform Transfer of Stock Act, and applies the same doctrine to bills of lading. While weight of authority, aside from statute, may have been opposed to quite so broad a definition of value in transactions in other documents than bills and notes, some courts at least have consistently applied the same rule to all transactions, and certainly so far as bills of lading are concerned, it seems unadvisable to make a distinction.

The definition of good faith here given is that recognized by the great weight of authority in the law of bills and notes, and the rule in equity generally seems to be the same.

**Section 54.—[ACT DOES NOT APPLY TO EXISTING BILLS.]**  
The provisions of this Act do not apply to bills made and delivered prior to the taking effect thereof.

**Section 55.—[INCONSISTENT LEGISLATION REPEALED.]**  
All Acts or parts of Acts inconsistent with this Act are hereby repealed.

**Secton 56.—[TIME WHEN THE ACT TAKES EFFECT.]**  
This Act shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and \_\_\_\_\_.

**Section 57.—[NAME OF ACT.]** This Act may be cited as the Uniform Bills of Lading Act.















KF 879 A2 1910 c.1

Author

Vol.

National conference of commiss-  
ioners on unifrom state laws  
Title American uniform commercial acts Copy

...

Date

Borrower's Name

